



# CALIFORNIA HIGH SPEED RAIL AUTHORITY

November 2011



*Edmund G. Brown Jr  
Governor  
State of California*



## SMALL AND DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

The California High Speed Rail Authority is committed to making small business a top priority in all contracting phases of this historic infrastructure project. Our goal is to achieve 30 percent small and disadvantaged business participation on the project. This commitment will serve to inspire business growth, job creation and workforce development opportunities while building the vitality of California's high speed rail program.

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## **TABLE OF CONTENTS**

I.	<b><u>SUBPART A: GENERAL REQUIREMENTS</u></b>	
	A. Program Authority and Applicability.....	1
	B. Definitions.....	1
	C. Non-Discrimination Requirements.....	5
	D. Federal Financial Assistance Agreement.....	7
II.	<b><u>SUBPART B: RESPONSIBILITY OF SB PROGRAM IMPLEMENTATION</u></b>	
	A. SB Liaison Officer.....	8
	B. Shared Responsibility.....	9
	C. Other Program Support Divisions .....	10
III.	<b><u>SUBPART C: ADMINISTRATIVE REQUIREMENTS</u></b>	
	A. Data Collection and Reporting.....	12
	B. Records Maintenance and Confidentiality.....	14
	C. SB Program Plan Updates and Amendments .....	14
	D. Prompt Payment Mechanisms.....	14
	E. Pre-Construction.....	15
	F. Contract Monitoring and Compliance.....	15
IV.	<b><u>SUBPART D: GOALS, GOOD FAITH EFFORTS, AND COUNTING SB PARTICIPATION</u></b>	
	A. Overall Goal.....	18
	B. Federal Financial Assisted Contract Goal.....	18
	C. Good Faith Efforts (Pre and Post Award).....	19
	D. Counting SB Participation .....	24
	E. Substitution or Termination of a SB, DVBE or DBE on a Contract .....	27
V.	<b><u>SUBPART E: DESIGN-BUILD PROVISIONS</u></b>	
	A. SB Performance Plan Program Objectives.....	31
	B. Key Personnel (Contractor SB Officer).....	31
	C. Meeting Established SB Goal.....	34
	D. Contractor Good Faith Effort and Reporting Obligations.....	35
VI.	<b><u>SUBPART F: SB SUPPORTIVE SERVICES, RESOURCE PARTNERS AND PARTNERING</u></b>	
	A. Supportive Services.....	37
	B. Resources Partners.....	37
	C. Partnering .....	38
VII.	<b><u>SUBPART G: WORKFORCE DEVELOPMENT PARTNERS</u></b>	
	A. Workforce Investment Act.....	39
<b>ATTACHMENTS:</b>		
	CHSRA Organizational Chart.....	Attachment 1
	DGS Standard Form 810 Contracting Activity Report.....	Attachment 2
	USDOT Uniform Report of DBE Awards/Commitments .....	Attachment 3
	Monthly SB Subcontractors Paid Report Summary and Payment Verification-- Form 103.....	Attachment 4
	49 CFR Part 26 Appendix A.....	Attachment 5
	Overall Project SB Goal Affidavit.....	Attachment 6
	49 CFR Part 26 Appendices C and D .....	Attachment 7
	Sample Partnering MOU Agreement.....	Attachment 8

## **I. SUBPART A – GENERAL REQUIREMENTS**

### **I.A. Program Authority and Applicability**

Pursuant to the CHSRA's project funding assurances, the SB Program is authorized by Executive Order S-02-06; and by Title VI of the Civil Rights Act of 1964 and related statutes.

This SB Program Plan is applicable to the CHSRA's State financially assisted and Federal USDOT (FRA) financially assisted projects. To ensure success of the program, the CHSRA will require strict compliance in meeting the program objectives and corresponding requirements by all CHSRA staff, its Contractors, Consultants and subcontractors, regardless of tier.

The SB Program:

1. Complies with State laws and Federal regulations and financial assistance agreements;
2. Meets legal standards of application;
3. Ensures non-discrimination in the award of State and DOT-assisted contracts; and
4. Reaffirms the CHSRA's commitment to fairness and the principles of equal opportunity.

In the event of any conflicts or inconsistencies between the Federal regulations and the SB Program with respect to DOT-assisted contracts, the regulations shall prevail.

#### **Design Build Contracts**

The CHSRA recognizes that certain modifications are necessary to adapt the SB Program for use in connection with Design-Build contracts and has therefore set forth prescribed requirements specific to Design Build projects in compliance with the best practices of State and Federal SB/DVBE/DBE program provisions.

### **I.B. Definitions**

Some of the most common terms, as used in the SB Program Plan, are defined as follows:

**Commercially Useful Function (CUF):** The definition for CUF, as used in this plan, applies to Small Business, Disabled Veteran Business Enterprise and Disadvantaged Business Enterprise as set forth below:

#### **DVBE:**

(B) ("Disabled veteran business enterprise contractor, subcontractor, or supplier" which means any person or entity that has been certified by the administering agency pursuant to this article and that performs a "commercially useful function," as defined below, in providing services or goods that contribute to the fulfillment of the contract requirements)

Pursuant to the Military and Veteran Code 999(b) (5):

(i) A person or an entity is deemed to perform a "commercially useful function" if a person or entity does all of the following:

(l)(aa) is responsible for the execution of a distinct element of the work of the contract.

(ab) carries out the obligation by actually performing, managing, or supervising the work involved.

(ac) performs work that is normal for its business services and functions.

(II) is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices.

(ii) a Contractor, subcontractor, or supplier will not be considered to perform a “commercially useful function” if the Contractor’s, subcontractor’s, or supplier’s role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of a disabled veteran business enterprise participation.

#### DBE:

Pursuant to Title 49 CFR Part 26.55 (1), “A DBE performs a commercially useful function when it is responsible for the execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. The DBE must also be responsible, with respect, to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material and installing and paying for the material itself.” As stated in 49 CFR Part 26.55 (2)(3), “A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. A DBE does not perform a CUF if it does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved.”

#### SB:

Pursuant to the California Code of Regulations §1896.4(h), a CUF for SB participation is determined by:

- (i) The Contractor or subcontractor is responsible for the execution of a distinct element of the work of the contract; carrying out its obligation by actually performing, managing, or supervising the work involved; and performing work that is normal for its business services and functions; and
- (ii) The Contractor or subcontractor is not further subcontracting a greater portion of the work than would be expected by normal industry practices.
- (iii) The Contractor or subcontractor is responsible, with respect to materials and supplies provided on the subcontract, for negotiating price, determining quality and quantity, ordering the material, installing (when applicable), and paying for the material itself.
- (iv) A Contractor or subcontractor will not be considered as performing a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to achieve the appearance of small business participation.

**Compliance:** A Contractor has correctly implemented the requirements of the SB Program.

**Contract:** A legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to construction and professional services) and the buyer to pay for them.

**Contractor:** One who participates, through a prime contract, in the CHSRA’s Design Build program. In this SB Program plan, Contractor shall also mean--Design-Builder, Master Contractor, Prime Contractor, and Prime Consultant.

**DBE Directory:** List of certified Disadvantaged Business Enterprises firms, which is used by the CHSRA and its Contractors to identify DBE potential Contractors and subcontractors and suppliers.

**Department of Transportation or USDOT:** The U.S. Department of Transportation, including the Office of the Secretary, the Federal Railroad Administration (FRA), Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA). Department of Transportation is also synonymous with Operating Administration.

**Disabled Veteran Business Enterprise (DVBE):** A DVBE business is defined as a business that is at least 51 percent owned by a disabled veteran who has at least a 10 percent service connected disability, a veteran of the United States military, and a California resident. This certification is issued by the California Department of General Services.

**Disadvantaged Business Enterprise (DBE):** A for-profit small business concern—

- That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals;
- Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and
- Has been certified as Disadvantaged in accordance with 49 CFR 26.

**DBE Certification:** A certification issued to a firm by a certifying member agency of the California Unified Certification Program (CUCP) which has been determined to meet all the requirements in accordance with 49 CFR Part 26. All certification determinations are evidenced by a letter of DBE certification issued by the certifying CUCP member.

**DOT-Assisted Contract:** A contract funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees.

**Goal:** A numerically expressed objective, which the CHSRA or its Contractors are required to make Good Faith Efforts to achieve.

**Good Faith Efforts:** Efforts to achieve a SB goal or other requirement of this part which, by their scope, intensity, and other appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

**Micro-Business (MB):** A Micro Business is independently owned and operated; not dominant in field of operation; principal office located in California; owners (officers, if a corporation) domiciled in California; and, including affiliates, annual gross receipts of \$3,500,000 or less, over the last three tax years; or is a manufacturer with 25 or fewer employees. This certification is issued by the California Department of General Services.

**North American Industrial Classification System (NAICS):** The five to six digit classification number which best describes the primary business of a firm. The basis for industry classification changed from the 1987 Standard Industrial Classification System (SIC) to the 2002 NAICS.

**Non-compliance:** A Contractor who has not correctly implemented the requirements of the SB Program.

**Professional Services:** Professional services that are infrequent, technical, or unique functions performed by independent Contractors or consultants whose occupation is the rendering of such services.

**Program:** Any undertaking on the CHSRA to use State and DOT financial assistance authorized by laws to which the SB Program applies.

**Race-Conscious Measure:** A program or portion thereof that focuses specifically on assisting only DBEs, including women-owned DBEs, by the development and inclusion of numeric participation goals.

**Race-Neutral Measure:** A program or portion thereof that, assists all small businesses regardless of ownership through community outreach and awareness programs to participate successfully in the CHSRA's procurement program. For the purposes of the SB Program, "race neutral" includes gender neutrality.

**Small Business (SB):** A Small Business is independently owned and operated, principal office is located in California and owners live in California, business grosses \$14 million or less over the previous three tax years, and is not dominant in its field of operations. This certification is issued by the California DGS. On the CHSRA's DOT-assisted contracts all certified SB firms are eligible to be credited toward meeting the SB goal. Certified SB firms participating on federal-assisted contracts are not required to have a principal office located in California.

**Small Business Administration (SBA):** The United States Small Business Administration.

**Small Business Concern:** With respect to firms seeking to participate as SB or DBE in DOT-assisted contracts, a business which meets the definition contained in Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR Part 26.65 (b).

**Small Business Liaison Officer (SBLO):** The SBLO shall be responsible for implementing all aspects of the CHSRA SB Program.

**Socially and Economically Disadvantaged Individual:** Any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

- (1) Found by the CHSRA to be a socially and economically disadvantaged on a case by case basis by a certifying agency pursuant to the standards of the USDOT Title 49 CFR Part 26.
- (2) A member of any one or more of the following groups, members of which are rebuttably presumed to be social and economically disadvantaged:
  - (i) "Black Americans" which includes persons having origins in any of the Black racial groups of Africa;
  - (ii) "Hispanic Americans" which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
  - (iii) "Native Americans" which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
  - (iv) "Asian Pacific Americans" which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of

- the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (v) “Subcontinent Asian Americans” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
  - (vi) Women; and
  - (vii) Any additional group whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

**Subcontractor:** (a) Prior to contract award, any person with whom the Offeror proposed to enter into a subcontract for any part of the work, or that will enter into a sub-subcontract for any part of the work, at any tier; or (b) after contract award, any person with whom the Contractor has entered into a subcontract for any part of the work, or with whom the Contractor has entered into a subcontract for any part of the work, or with whom any subcontractor has further subcontracted any part of the work, at all tiers. In this SB Program plan, Subcontractor shall also mean—Supplier, Vendor, Services, to include general and professional services, regardless of tier.

**Work Code:** A code that identifies the various components or function areas of what is associated with the products or services of a particular company. The determination of the work to be performed by a DBE is made during the certification process using the analysis in 49 CFR Section 26.71(n). The regulations state, in part, that certification to a firm is granted only for specific types of work in which the socially and economically disadvantaged owners perform. To determine if the firm is qualified to perform the type of work, a review is made by the California Unified Certification Program as a recognized certifying agency authorized by USDOT.

**Unified Certification Program (UCP):** One-stop certification clearinghouse, enabling applicants to apply once for DBE certification which, will be honored by all DOT recipients in the state of California.

**Vendors Registry List:** A list of all contractors, SB and Non-SB, which have expressed an interest in bidding on the CHSRA’s prime contracts and subcontracts on the CHSRA assisted projects. The purpose of this list is to provide as accurate data as possible about the universe of SBs and non-SBs who seek to work on the CHSRA contracts.

## **I.C. Non-discrimination Requirements**

The CHSRA will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract.

In administering its SB Program, the CHSRA will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the SB Program with respect to individuals of a particular race, color, sex, disability or national origin.

### For Strictly State Funded Contracts

In accordance with State nondiscrimination program requirements as set forth in Government Code Section 12990 et seq and Title 2, California Code of Regulations, Division 4, Chapter 5, Sections 8103, 8104, 8108 and 8113 (unless exempted pursuant to Section 8115) Contractors or subcontractor firms with 50 or more employees shall provide a description of the firm’s nondiscrimination plan designed to eliminate discrimination based on race, color, religion, age, sex, sexual orientation, disability, or national origin.

Each firm (Contractor or subcontractor) with fewer than 50 employees must provide a statement indicating that the firm has fewer than 50 employees and is therefore exempt from the Nondiscrimination Plan requirement.

For Federal Funded Contracts:

In accordance with Title VI of the 1964 Civil Rights Act, Contractors and Consultants (regardless of tier) shall comply with the following non-discrimination requirements.

A. **Compliance with regulations:** The Contractor shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the U.S. Department of Transportation - Title 49 CFR Part 21 and Part 26.7 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of Federal assistance will implement and maintain a policy of nondiscrimination in which no person shall, on the basis of race, color, or national origin, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of Federal assistance or their assignees and successors in interest.

B. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Contractor shall not discriminate on the basis of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Part 21.5 of the USDOT's regulations, including employment practices.

C. **Solicitations for Subcontracts, Including Procurements of Services, Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.

D. **Information and Reports:** The Contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the CHSRA or any duly authorized representative of the Federal Government to be pertinent to ascertain compliance with such regulations or directives. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the CHSRA, or any duly authorized Federal Agency as appropriate, and shall set forth what efforts it has made to obtain the information.

E. **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the CHSRA shall impose such Agreement sanctions as it or any Federal funding agency may determine to be appropriate, including, but not limited to:

- 1) Withholding of payments to the Contractor under the Agreement until the Contractor complies, and/or
- 2) Cancellation, termination or suspension of the Agreement, in whole or in part.

F. **Incorporation of Provisions:** The Contractor shall include the provisions of paragraphs (A) through (F) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.



The Contractor will take such action with respect to any subcontractor or procurement as the CHSRA or any Federal funding agency may direct as a means of enforcing such provisions including sanctions for noncompliance.

The CHSRA will ensure that the following clause is placed, verbatim in every DOT-assisted contract with statutory authority to implement Title 49 CFR Part 26 requirements and subcontract regardless of tier.

*The Contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, or national origin, in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26.13(b) in the award and administration of DOT assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the CHSRA deems appropriate.*

#### **I.D. Federal Financial Assistance Agreements**

Pursuant to Public Utilities Code 185036(d) the CHSRA may enter into a cooperative or joint development agreement with local governments or private entities. As a condition of receiving Federal financial assistance funds, the local government or private entities must adhere to and develop and implement a DBE Program in accordance with 49 CFR Part 26 requirements, where applicable.

Pursuant to Federal provisions, the CHSRA shall require the local government or private to provide assurances of their compliance with the Federal financial assistance agreement. The following language is to be used as required by 49 CFR Part 26.13(a), and will appear in financial assistance agreements with local governments or private entities.

##### Assurance: 49 CFR Part 26.13(a)

*The (INSERT LOCAL GOVERNMENT OR PRIVATE ENTITY NAME) shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The (INSERT NAME) shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT assisted contracts. The CHSRA SB Program, as required by 49 CFR part 26 and as approved by FRA or FTA, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the CHSRA of (INSERT NAME) failure to carry out its approved program, the FRA or FTA may impose sanction as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).*

The CHSRA shall maintain program oversight to ensure the local government or private entity complies with 49 CFR Part 26 requirements, where applicable, under the cooperative or joint development agreement.

## **II. SUBPART B- RESPONSIBILITY OF SB PROGRAM IMPLEMENTATION**

### **II.A SB Liaison Officer (SBLO)**

The CHSRA's Chief Executive Officer (CEO) designates the SBLO to administer the day to day operations of the SB Program. The SBLO has direct, independent access to the CEO of CHSRA concerning SB Program matters. The SBLO contact information is:

Chris Ryan, Chief Deputy Director  
Small Business Liaison Officer  
California High Speed Rail Authority  
770 L Street, Suite 800  
Sacramento, CA 95814  
(916) 324-1541

The SBLO or its designee, is responsible for implementing all aspects of the SB Program and ensuring that CHSRA complies with all provisions of the Executive Order S-02-06 and 49 CFR Part 26.25, where applicable. An organization chart displaying the SBLO position in the organization is found in Attachment 1 to this plan.

In this capacity, the SBLO is responsible for developing, implementing and monitoring the SB Program, in coordination with other appropriate officials. The SBLO shall have appropriate resources to assist in the administration of the program. The duties and responsibilities include, and are not limited to the following:

- ▶ Develops, implements and monitors, the SB Program plan, keeping it up-to-date with the current business environment and the latest revisions to the applicable State and Federal laws and regulations, ensuring the SB Program is responsive to and in compliance with the regulations, including, but not limited to, the Executive Order S-02-06 and 49 CFR Part 26, where applicable.
- ▶ Ensures the CHSRA employees and its vendors under contract; understand the importance of the SB Program and meeting the established SB participation goals.
- ▶ Provides SB Program training to the CHSRA employees, Program Management Teams and others as appropriate.
- ▶ Gathers and reports statistical data as required for appropriate entities.
- ▶ Reviews third party contracts and purchase requisitions for compliance with this program.
- ▶ Works with the Program Management Team to set an overall annual business goal.
- ▶ Ensures bid notices and requests for proposals are available to SBs in a timely manner.
- ▶ Identifies DOT-assisted contracts and procurements and assesses viability for race-neutral or race-conscious contract-specific goal application, where applicable.
- ▶ Analyzes progress toward goal attainments and identifies ways to improve progress.
- ▶ Participates in SB meetings and outreach events.

- ▶ Participates in the development and review of contract specifications and solicitations.
- ▶ Advises the CEO and the CHSRA's Board on SB matters and achievements.
- ▶ Plans and participates in SB training seminars.
- ▶ Conducts business outreach and assists SBs in obtaining the necessary information to compete on contracts by providing guidance and direction, and advising SBs on where to seek management, technical business development expertise, bonding, lines of credit and other supportive services.
- ▶ Provides guidance and assistance to Contractors on the development and implementation of their SB Program Performance Plans.
- ▶ Reviews SB participation reports from Contractors and makes recommendations, where applicable.
- ▶ Monitors and conducts SB Program reviews of the Contractors adherence with the SB Program and Performance Plans.
- ▶ Ensures coordination of the SB Program deliverables with CHSRA managers, the CHSRA Board, Governor's Office, DGS, Federal Railroad Administration, Federal Transit Administration, local agencies and the business community.
- ▶ Ensures only firms meeting eligibility standards participate and count towards the overall SB goal.

## **II.B. Shared Responsibility**

The following CHSRA divisions have a shared responsibility to achieve the overall SB Program goals and ensure compliance and success of the SB Program.

**Administrative Services - Procurements and Contracts**, responsibilities will include and are not limited to the following:

- ▶ Provides draft scopes of work and engineering estimates to enable the SBLO to actively engage in goal setting, outreach and the development of appropriate SB language in solicitation documents.
- ▶ Provides the SBLO with copies of final Information For Bids (IFB), Request for Proposal (RFP), Request For Interest of Qualification (RFIQ), Purchase Orders (PO), mailing lists and advanced notices on CHSRA procurements.
- ▶ Incorporates SB goals and compliance language into the solicitations.
- ▶ Notifies the SBLO of any changes to IFBs, RFIQs, RFPs and POs.
- ▶ Sends information on contracting opportunities to the SBs on the Vendors Registry list.

- ▶ Documents the placement of legal notices in response to Title VI and 49 CFR Part 26 publication requirements for overall project and contract-specific goals, as applicable. Notices will be placed in general, trade and minority focused newspapers.
- ▶ Notifies the SBLO of pre-bid, pre-proposal and pre-construction conferences.
- ▶ Solicits and maintains SB Vendors Registry List listing organized by predetermined categories and assists in the identification of potential SB vendors and contractors.
- ▶ Requests SBLO or staff member participation on Bid and Proposal Evaluation, and Negotiation Committees or Teams.
- ▶ Forwards copies of Bids and Proposals to the SBLO for evaluation of responsiveness and or responsibility to SB requirements.
- ▶ Participates in outreach programs, including vendor fairs.
- ▶ Collects, tracks and reports quarterly and annual SB reports to State and Federal officials.
- ▶ Assists the SBLO in compiling Federal financial assistance information and data in order to calculate the appropriate DBE goal, as applicable.
- ▶ Assists the SBLO to identify SB financial institutions, bonding and insurance programs to help increase the number of SB participating in contracts and subcontracts.
- ▶ Assists on other contract administration that impacts SB participation.

## **II.C. Other Program Support Divisions**

The CHSRA personnel, divisions and Program Management Teams share in the responsibility for ensuring the effective implementation and success of the SB Program. The program support divisions and Program Management Teams are expected to give their full cooperation and active support to the SBLO in this effort.

**Program Management Teams** responsibilities will include, and not limited to:

- ▶ Develops a working knowledge of the SB Program's policies, practices and procedures including race neutral and race conscious methods of achieving SB participation, by reading the SB Program requirements;
- ▶ Notifies the SBLO in a timely manner of their project's Pre-Proposal or Pre-Bid conferences and "Kick-Off" meetings.
- ▶ Structures individual contracting actions to create a level playing field and participation by SB wherever possible. This includes dividing a contract statement of work, where possible, into portions that will enable SBs to compete as Contractors. Proper use of this structuring for SB participation shall not result in the avoidance of proper approval authority. This also includes, if not prohibited by State law, waiving or reducing bonding requirements or allowing for incremental bonding.

- ▶ Assists the SBLO to perform ongoing contract compliance and monitoring to ensure that SBs are used on the contracts and subcontracts.
- ▶ Assists the SBLO to obtain SB participation data records and reports, to include reviewing the documents for compliance with the contract terms and conditions and SB Program requirement.
- ▶ Identifies and refers potential SB utilization issues promptly to the SBLO.
- ▶ Responds promptly to other SB related requests.

**Communications and Outreach Team** responsibilities will include, and not limited to:

- ▶ Provides up-to-date information electronically, on the CHSRA website, regarding contracting opportunities, upcoming events and current SB Program information.
- ▶ Ensures similar business opportunities and events are posted on the DGS and BidSync website.
- ▶ Assists the SBLO to provide technical assistance to firms requesting to be placed on the Vendors Registry list, provides database information, including detailed step by step instructions on how to register on Vendors Registry database, and responds to questions about doing business with the CHSRA.

### **III. SUBPART C - ADMINISTRATIVE REQUIREMENTS**

#### **III.A. Data Collection and Reporting**

##### **State SB Reporting**

Pursuant to Government Code § 14838, the CHSRA will report SB participation to the CHSRA's Board, DGS, and California Legislators through the Standard Form 810—Contracting Activity Report and related Form 810's. The report shall be submitted to DGS by July 31 of each year. The data will include SB contract and subcontract awards for previous fiscal year on strictly State funded contracts (See Attachment 2—Standard Form 810).

##### **Federal SB Reporting**

The CHSRA will report SB, including DBE participation utilizing the existing USDOT Uniform Report of DBE Awards/Attainments Form. The report will be submitted to the FRA, on a semi-annual basis (June 1 and December 1) each year. The June 1 report shall include information from October 1 through March 31. The December 1 report shall include information from April 1 through September 30. These reports will capture SB, including DBE participation for DOT financially assisted contracts awarded during the reporting period and actual SB attainments based on payments made to SBs and DBEs on DOT financially assisted contracts closed within the respective reporting period (See Attachment 3 for the USDOT Uniform Report of DBE Awards and Commitments Form).

In the event that the CHSRA receives USDOT financial assistance from an Operating Administration that has directed the authority to impose 49 CFR Section 26.45(e) (2), the CHSRA will develop a DBE goal in accordance with federally prescribed goal setting methodology and submit its overall DBE goal to the appropriate DOT Operating Administration, by August 1, under a three-year goal review interval. The CHSRA will additionally, on an annual basis review its DBE attainments in contrast to its overall DBE goal to determine if any measures, including race conscious measures would need to be instituted to effectively meet its established overall DBE goal.

##### **SB Vendors Registry List**

The CHSRA will create and maintain a vendor's registry list, consisting of information regarding all SBs and non-SBs that have expressed an interest in, have bid or quoted on the CHSRA's contracting opportunities. The purpose of the vendors' registry list is to determine the availability of the SBs interested in the rail project and selected Contractor's subcontract opportunities. The Vendors Registry list is designed to capture:

- Vendor name
- Contact information—address, phone numbers
- SB certification type and status
- If the firm is not a SB, their non-SB status
- Age of business
- General or average annual gross receipts
- General business services
- Vendor's NAICS
- Central Contractor Registration number

The Vendors Registry list will be derived through the contract procurement solicitation process and through the CHSRA's website. The listing will be distributed to prospective bidders and offerers based on the identified subcontracting possibilities associated with a bid and/or RFP solicitation.

#### SB/DVBE/DBE Directories:

The CHSRA shall rely on the DGS SB/DVBE Directory and the California Unified Certification Program (CUCP) to identify certified firms. A complete listing of certified SBs and DVBEs can be found at [www.dgs.ca.gov/pd/programs/OSDS.aspx](http://www.dgs.ca.gov/pd/programs/OSDS.aspx). A complete listing of certified DBEs can be found in the California Unified Certification Program website at [www.californiaucp.org](http://www.californiaucp.org) or via [www.dot.ca.gov/hq/bep](http://www.dot.ca.gov/hq/bep).

The directories provide the firm's name, address, phone number, fax number, certification status and the type of services the firm provides. (Government Code §14837 and 49 CFR 26.31)

#### Notification of Reporting Responsibilities

Prior to execution of all contracts, the Contractor shall be directed to the contract specification for the CHSRA's specific SB reporting and record keeping requirements.

#### SB Activity Reporting Forms

All Contractors shall submit monthly progress reports on SB utilization to the CHSRA. The CHSRA and Contractors will keep a running tally of actual payments to SBs for work committed to them during the contract performance. Attachment 4, *Monthly SB Subcontractors Paid Report--Summary and Payment Verification* (Form 103) will be used to keep the running tally. This reporting requirement also captures and reports SB participation at all tiers.

All Contractors shall submit the Form 103 by the 15<sup>th</sup> of each month. Failure to submit the Form 103 reports may result in the imposition of a penalty of \$1,000 per day for each monthly report overdue. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation in the minimum amount of \$2,500 and the maximum amount of \$25,000. An action for a civil penalty under this subdivision may be brought by any public prosecutor in the name of the people of the State of California and the penalty imposed shall be enforceable as a civil judgment. [Military and Veterans Code § 999.5(d)].

The Form 103 is designed to capture the following information:

- a. Name of each SB participating under the respective contract.
- b. Type of work assignment designated to each SB.
- c. The dollars committed to each SB.
- d. The dollars paid to each SB during the reporting period.
- e. The dollars paid to date for each SB.
- f. The dollars paid to the SB as a result of a change order or other cost modification.
- g. The dollars paid to date as a percentage of the total commitment to each SB.
- h. Date of last progress payment to the Contractor.
- i. Invoice number corresponding to last payment to subcontractor.
- j. An authorized Contractor's Signature that certifies under penalty of perjury that it has complied with all SB Program requirements, including prompt payment and retainage requirements per State laws and 49 CFR Part 26.29.

### **III.B. Record Maintenance and Confidentiality**

The CHSRA shall maintain records for the period prescribed in State Records Management and Federal Records Management and requires Contractors to do the same. The CHSRA shall safeguard from disclosing to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, State, and local law. The California Legislature created the Public Records Act, mindful of the right of individuals to privacy, finding and declaring that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state (Government Code § 6250).

### **III.C. SB Program Plan Updates and Amendments**

The SB Program Plan will be administered in accordance with applicable statutes, regulations and funding assurance conditions. The SB Program may be amended to reflect significant operation, administration, regulatory and/or statutory changes that will effect implementation of the program. Amendments to the program will be incorporated and presented to the appropriate funding partners, as deemed necessary. The amended language will be posted on the website as an "update" to the SB Program.

### **III.D. Prompt Payment Mechanisms**

The CHSRA will include the following clause in each prime contract:

*"The Contractor/Consultant agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the Contractor receives from CHSRA. The Contractor/Consultant agrees further to return retainage payments to each subcontractor within ten (10) days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the CHSRA. This clause applies to both SB and non-SB contracts (Government Code 927 et seq. Public Contract Codes 10261, 10262 et seq, Business and Professions Code 7108.5, Military and Veterans Code 999.5 (d) (4), and 49 CFR Part 26.29, where appropriate.)"*

#### Monitoring Payments to SBs

The CHSRA shall monitor and enforce the Contractor's compliance with the prompt payment provisions to ensure all contract terms and conditions are fully adhered to. Evidence of payment made to subcontractors must be provided at the CHSRA's request, to verify compliance. Credits toward overall or individual contract goals are to be taken upon satisfactory evidence that payments were actually made to SBs. Failure to comply with these provisions or delay in payment without prior written approval from the CHSRA will constitute noncompliance, which will result in appropriate administrative sanctions, up to and including withholding of payment to the Contractor.

It is the Contractor's responsibility to maintain records and documents upon completion of the contract. These records will be made available for inspection upon request by any authorized representative of the CHSRA or FRA or USDOT. The CHSRA may perform interim audits of payments to SBs. The audit will review payments to SBs to ensure that the actual amount paid to SBs equals the dollar amounts reported on the Form 103 report.



If CHSRA determines that the Contractor has failed to comply with the prompt payment provisions set forth, a written notice shall be given to the Contractor and the Contractor's Surety that, if the default is not remedied within a specified period of time, at least five (5) days, the contract may be terminated for cause in accordance with the terms and conditions.

### **III.E. Pre-Construction**

#### Pre-Construction (Kick-off) Job Meeting

The Contractor and a representative of each SB firm shall attend the pre-construction job meeting to ensure all parties understand and are acclimated to the SB Program requirements. The CHSRA will provide an overview of the contract SB requirements, including prompt payment, retention, commercially useful function, reporting requirements, and other matters. This meeting shall be held prior to or immediately after the Notice to Proceed is issued. Further, the Contractor shall report its failure to execute subcontractor agreements for any of the listed SBs within 14 working days of signing the contract or 14 days from signing the individual SB subcontracts. The Contractor shall be responsible for informing the subcontractors, regardless of tier, of all the SB requirements as specified by the CHSRA and herein.

### **III.F. Contract Monitoring and Compliance**

The CHSRA's Contract Compliance Officer shall be responsible for working with the designated SB Liaison Officer to ensure the following contract monitoring and enforcements actions are taken to comply with Executive Order S-02-06 and 49 CFR Part 26, where applicable.

#### Recordkeeping

The CHSRA has a recordkeeping mechanism that allows for timely data capturing on the Contractor's SB participation attainments. The Contractor's monthly submission of the Form 103 enables the CHSRA to effectively monitor, track and report SB contract awards and progress in attaining their respective SB goal commitments throughout the performance of the contract. The CHSRA will monitor the Contractor's compliance to ensure that work committed to SBs at contract award and thereafter is actually performed by the SBs and their subcontract values are actualized based on dollars paid to the SBs. Procedures adopted by the CHSRA also serve to comply with the Governor's Executive Order S-02-06 and that of the USDOT regulations.

The Form 103 will document the following:

1. Type of contract.
2. Name and address of each SB and certifications held.
3. The dollar amount of each contract and subcontract.
4. Dollars committed to and dollars paid to SB(s).
5. A requirement to maintain records and documents of payments to SBs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of CHSRA or State Department or USDOT.

#### Executed SB Subcontract Agreements

The Contractor shall submit copies of all executed SB subcontracts and/or SB purchase orders (PO) within 14 working days after the Contractor executes their contract or PO with the CHSRA. The subcontractors, regardless of tier, are required to also meet this requirement. The

Contractor and its lower tier subcontractors must incorporate prompt payment and dispute resolution provisions in all executed subcontract agreements.

#### Monthly Expenditure Plan

The Contractor is responsible for a monthly expenditure plan in calendar form for each of its approved SB Subcontractors/Suppliers which shall be submitted within 30 days of Notice to Proceed and the issuance of individual subcontract agreements. The planned expenditures shall equal the dollars committed to each SB subcontractor/supplier and shall be developed according to the approved project schedule. The plan shall be updated to incorporate any schedule changes and executed Changed Notices and Work Authorization Change Notices affecting the SB's work. A revised plan shall be submitted within 30 days from the incorporation of the change.

#### On-Site Performance Monitoring

During the course of the contract, the CHSRA will perform on-site monitoring to ensure that work committed to SB firms is actually being performed by the SBs. This monitoring effort is fully incorporated into the CHSRA's SB On-site Compliance field observation process.

The CHSRA may also utilize the Labor Compliance Field Interview process as a secondary mechanism to verify that work awarded to SBs are being performed by the listed SBs own workforce. The interview results will be reconciled against the SB agreements and Contractor's Form 103 reports.

#### Written Certification

As a part of the project/contract close-out process, the CHSRA will include a written certification that it has fully monitored this contract in accordance with the SB policy and program. The written certification will be maintained in the contract file.

#### Administrative Remedies for Non-Compliance

Areas of identified non-compliance will be subject to administrative sanctions. All Contractors deemed to be in non-compliance shall be informed in writing, by certified mail, by the SBLO or designee, that administrative remedies shall be imposed for failure to comply with the SB Program requirements. The Contractor shall be given five (5) working days from the date the notice was received, to file a written appeal to the Chief Executive Officer. Failure to respond within the five (5) day period shall constitute a waiver of appeal. The notice shall state the specific administrative remedy to be imposed.

The Chief Executive Officer, or his/her designee, at his/her sole discretion, may schedule a hearing to gather additional facts and evidence and shall issue a final determination on the matter within five (5) working days of receipt of the written appeal. The written decision of the Chief Executive Officer or designee is final and there is no further administrative appeal process.

In the event the Contractor fails to demonstrate that it undertook adequate good faith efforts to the satisfaction of the CHSRA to meet the objectives of the program and/or meet their respective SB goal commitment, the CHSRA reserves the right to initiate administrative remedies, which may include but are not limited to initiating a partial withhold of payments due equivalent to the difference between the actual SB attainment and SB goal commitment; suspension of payment to the Contractor of any other monies held by the CHSRA and or termination of the contract in part or in whole.

The Administrative Remedies shall not apply if the Contractor is able to demonstrate to the satisfaction of the CHSRA that it has fully effectuated compliance to remedy all areas of noncompliance and/or exercised adequate efforts in an attempt to meet the overall project and/or contract-specific SB goal commitments.

For contracts subject to USDOT Operating Administration under 49 CFR Part 26, the CHSRA will bring to the attention of the affected Operating Administration through the Civil Rights Officer, any false, fraudulent, or dishonest conduct in connection with the program, so that affected Operating Administration can take the steps (e.g., referral to the US Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 49 CFR Part 26.107. The CHSRA also will consider similar action under its own legal authorities, including responsibility determinations in future contracts.

#### USDOT Hotline

The USDOT provides a toll-free “hotline” service to report bid rigging activities. Bid rigging activities can be reported Monday through Friday, between 8:00 a.m. and 5:00 p.m., Eastern Time, telephone (800) 424-9071. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the “hotline” to report these activities. The “hotline” is part of the USDOT’s continuing effort to identify and investigate highway construction contract fraud and abuse, and it is operated under the direction of the USDOT Inspector General. All information will be treated confidentially, and caller anonymity will be respected.

## **IV. SUBPART D GOALS, GOOD FAITH EFFORTS, AND COUNTING SB PARTICIPATION**

### **IV.A. Overall Goal**

The CHSRA has established an SB overall project goal of 30 percent to be achieved through the utilization, in any combination and at any tier level, of firms who are certified as:

- ▶ Small Business
- ▶ Disabled Veteran Business Enterprises
- ▶ Disadvantaged Business Enterprise
- ▶ Micro-Business

The CHSRA will exercise good faith efforts to meet the overall SB Program goals, in partnership with its Contractors and resource partners. The selected Contractor will be responsible for establishing subsequent subcontract goals, as appropriate, for the subcontracts it lets, to meet their overall SB goal commitment (See Subpart E-- Design Build Provisions).

### **IV.B. Federal Financial Assisted Contract Goal**

For contracts with USDOT financial assistance that are received from an Operating Administration with statutory authority to impose 49 CFR Part 26, the CHSRA shall establish an appropriate DBE goal for the individual projects and or contracts. A description of the methodology to calculate the DBE goal, for each project or contract, can be found in the USDOT Office of Small Disadvantaged Business Utilization website at [www.osdbu.dot.gov](http://www.osdbu.dot.gov).

The CHSRA will further follow accountability mechanisms in the rare instance where the CHSRA has failed to meet its overall triennial DBE goal, in good faith. If at the end of the Federal fiscal year, the CHSRA fails to meet its overall goal for that fiscal year, the CHSRA will thoroughly analyze why it fell short of meeting its overall goal for a given goal period and establish specific steps and milestones for correcting identified problems so that the CHSRA will meet its overall goal in the subsequent triennial period. The CHSRA will submit its proposed plan, as applicable to the USDOT Operating Administration within 90 days of the end of the fiscal year, as applicable to ensure compliance. The CHSRA will additionally maintain strong outreach efforts to encourage minority and women-owned firms to become certified as DBEs to increase the pool of ready, willing and able DBEs to participate in the CHSRA federally assisted contracts.

The CHSRA will provide its overall goal recommendation to the CHSRA Board, SBs and other small business resource organizations for review, comment and consultation. Following this consultation, the CHSRA will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rational are available for inspection during normal business hours at its principal office for 30 days following the date of the notice, and inform the public that the CHSRA is soliciting comments for consideration on the proposed goals for 45 days from the date of the notice. The notice shall include the address to which comments may be sent and business location where the proposed goal may be reviewed.

Where applicable, the CHSRA will begin using the established overall goal on October 1, unless the CHSRA has received other instructions from the USDOT Operating Administration.

In the event, the CHSRA is directed by the USDOT Operating Administration, to operate in a race-conscious environment, the CHSRA will use DBE contract goals to meet any portion of the overall goal the CHSRA does not project being able to meet using race-neutral measures. Contract goals are

established so that, over the period to which the overall goal applies, contract goals will cumulatively result in meeting any portion of the CHSRA's overall goal that is not projected to be met through the use of race-neutral measures.

#### **IV.C. Good Faith Efforts (Pre and Post Award)**

##### State Funded Contracts

The CHSRA and its Contractors, as good business stewards will exercise good faith efforts to meet the CHSRA's overall SB goal outlined in this SB Program, including developing innovative contracting strategies and providing necessary supportive services to promote and ensure the success of Small Businesses as defined in all aspects and phases of the CHSRA's contracting program. At this time the CHSRA will administer the SB Program in a race and gender neutral environment.

Good Faith Efforts procedures are not a condition of the contract award for SB and DVBE participation in meeting the State funded project goal.

The CHSRA and its Contractors will be requested to employ the following good faith effort strategies towards ensuring that Small businesses as defined have the maximum practicable opportunity to participate in the CHSRA's state and federal-assisted contracting programs. The good faith effort strategies are in no way all inclusive of the efforts expected to ensure these program goals and objectives are met:

- Selecting and breaking out contract work items into economically feasible units to facilitate SB participation, even when the Contractor might otherwise prefer to perform these work items with its own forces.
- Solicit through all reasonable and available means the interest of all SBs in the market area.
- Provide sufficient time for the SB to respond to the solicitation and takes appropriate steps to follow up the initial solicitation to the SB.
- Host pre-bid conference or "Open House" to meet and greet with potential SBs who are interested in the subcontract opportunities.
- Select portions of the work to be performed by SBs, increasing the likelihood that the SB goal will be met.
- Provide interested SBs with information about the contract in a timely manner and assists them in responding to the solicitation.
- Negotiate in good faith with interested SBs.
- Seriously consider all SB sub bids.
- Assist SBs in obtaining bonding and lines of credit.
- Assist interested SBs in obtaining equipment, supplies, materials or related assistance or services.
- Use the services of SB, DVBE, Chambers of Commerce, minority or women business organizations, government agencies or other groups to identify SBs.
- Conduct outreach activities on an ongoing basis to ensure SBs are ready, willing and able to pursue viable subcontract opportunities.

##### Federal Financial Assisted Projects

The demonstration of good faith efforts requirements in accordance with 49 CFR Part 26.53 may apply based on the CHSRA's funding conditions to meet established DBE contract and/or overall project DBE goal, as appropriate. The Contractor will enjoin with the CHSRA, to exercise good faith efforts to meet

the overall DBE project goal and the subsequent subcontract specific goals it has assigned to meet its goal commitments.

In the event that the CHSRA is required to establish good faith effort requirements, as stated in 49 CFR Part 26, as a condition of award of a contract, the CHSRA will follow the prescribed standards delineated below in accordance with Appendix A of 49 CFR Part 26, (Attachment 5).

The standards represent the minimum level of effort to demonstrate that the Bidder or Proposer complied with the Good Faith Effort requirements. It is not intended to be an all inclusive list of all Good Faith Efforts that can be undertaken to meet the goals and objectives:

1	<b>ATTENDANCE AT PRE-BID CONFERENCE/JOB WALK</b>
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**Effort:** Attendance at pre-bid proposal conference and job walk, if held by the CHSRA (or the Contractor for subsequent subcontract bid packages it lets), to solicit the interest of certified DBEs who have the capability to perform the work of the contract.

**Evidence:** Name, title and date of person(s) attending, to be verified by conference sign-in sheet.

2	<b>IDENTIFICATION OF SCOPE OF WORK FOR SUBCONTRACTS IN ORDER TO MEET THE PROJECT GOAL</b>
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**Effort:** Selecting portions of the work that can be subcontracted to DBEs in order to increase the likelihood that the overall DBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Bidder/Proposer might otherwise prefer to perform these work items with its own forces.

**Evidence:** Identifying scope of work the Bidder/Proposer intends to perform with its own workforce and identifying the subcontracting items the Bidder/Proposer made available to DBEs to meet the established DBE goal.

3	<b>ADVERTISEMENT OF SUBCONTRACTING OPPORTUNITIES</b>
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**Effort:** Advertisement in trade association publications and disadvantaged/minority and women business focused media. Advertisements must identify specific subcontracting opportunities being solicited, project name and location, Bidder/Proposer contact person including name, address, phone, fax, e-mail and bid solicitation submittal due date. Advertisements should appear a minimum of 14 days prior to bid due date.

**Evidence:** As verification of publication, Bidder/Proposer must provide listing of advertisements placed, including copies of advertisement tear sheets and/or proof of publication containing at minimum the information specified above.

4	WRITTEN REQUESTS FOR BIDS/PROPOSALS
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**Effort:** Provision of written notice to the maximum number of DBE firms to solicit interest *for each subcontracting area identified sufficient to meet the established goal*. Notices should be issued at least 14 days prior to bid submittal due date.

**Evidence:** Copy of the solicitation letter, list of recipients grouped by each identified subcontracting area, including name, address, and phone number, and date contacted for all DBE firms *for each subcontracting area identified*, and identification of mode of communication (letter or fax), including corresponding copies of letters and/or fax confirmations.

5	SOLICITATION FOLLOW-UP
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**Effort:** Subsequent efforts to solicit DBEs within all available *subcontracting areas*. The follow-up solicitation should occur within a reasonable time of the initial solicitation, in order to allow the Bidder/Proposer to solicit additional DBEs and identify additional subcontractable items to draw greater interest and subbids.

**Evidence:** Bidder/Proposer must determine with certainty if the DBEs initially solicited are interested by taking appropriate steps to follow up on initial solicitations. Documentation should include:

- (a) Names, addresses and telephone numbers of DBEs contacted by each subcontracting area identified/solicited;
- (b) Description of information timely provided to DBEs regarding plans and specifications for portions of the scope of work to assist DBEs in responding to the solicitation; and
- (c) Statement of justification re: unsuccessful solicitation of DBEs.
- (d) Describe additional efforts the Bidder/Proposer made to encourage greater interest from DBEs to submit subbids.

6	NEGOTIATION IN GOOD FAITH
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**Effort:** Negotiating in good faith with interested DBEs, to facilitate DBE participation. Utilize a sound basis for selection and/or rejection of DBE subbids/proposals.

**Evidence:** Evidence of such negotiation includes the names, addresses, and phone numbers of all subcontractors (DBEs and non-DBEs) who submitted bids; copies of subbids for each portion of work solicited; and stated reasons for choice of subcontractor. (Barring lack of qualifications to perform work, only significant price differences of 10 percent (an applicable regulatory guideline) between the selected firm and rejected DBE firms' proposed costs would be considered as valid cause for rejecting subbids.

7	PERFORMANCE OF OTHER BIDDERS/PROPOSERS IN MEETING THE DBE GOAL
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**Effort:** In determining whether the low Bidder/Proposer has made adequate efforts to meet the DBE goal, the CHSRA, as appropriate will take into account, the performance of other level Bidders/Proposers in meeting the established contract-specific goal requirements.

**Evidence:** The individual Bidder/Proposer must meet or exceed the average DBE participation obtained by the three (3) low responsive Bidders/Proposers to adequately demonstrate that the apparent successful Bidder/Proposer has taken all reasonable efforts towards meeting the contract-specific goal.

8	<b>PROVISION OF ASSISTANCE TO DBEs TO OBTAIN BONDING, LINES OF CREDIT AND/OR INSURANCE</b>
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**Effort:** Provision of assistance to interested DBEs in obtaining bonding, lines of credit, and/or insurance as required by the Bidder/Proposer.

**Evidence:** Brief description of the type of assistance provided by the Bidder/Proposer to interested DBEs in obtaining bonding, lines of credit and/or insurance.

9	<b>UTILIZATION OF COMMUNITY OUTREACH SERVICES</b>
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**Effort:** Utilization of outreach services available within the DBE community, including construction/consultant groups, local, State and Federal DBE offices and other organizations that provide assistance in the recruitment and placement of DBEs.

**Evidence:** Copies of letters, faxes, telephone logs, etc., used to contact organizations, which include the names of organizations/groups, dates, names of contacts, and telephone numbers; and copies of correspondence received from these entities acknowledging contact. The Bidder/Proposer must document outreach to a minimum of five (5) organizations/groups.

Verification of Good Faith Efforts. Only those efforts made prior to bid/offer will be considered in evaluating adequate efforts to meet the goal. Failure to submit the required documentation by the time specified will be grounds for finding the bid/proposal non-responsive. Subsequent level Bidders/Proposers need not submit their DBE participation effort documentation unless requested to do so by the CHSRA.

The CHSRA will treat compliance with good faith efforts' requirements as a matter of responsiveness on any race-conscious solicitation, as applicable per 49 CFR Part 26.53(b).

Each solicitation for which a contract goal has been established will require the Bidder/Proposer to submit the following information:

1. The names and addresses of each DBE that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use the listed DBEs whose participation will count towards the contract goal;
5. Written and signed confirmation from the DBEs that it is participating in the contract as provided in the Contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.



### Good Faith Efforts Towards SB Participation (Post Award)

As good stewards to ensure SB participation during the term of the contract, the selected Contractor shall continue to make good faith efforts to ensure SBs have an opportunity to successfully perform in the contract, and that the Contractor meets its SB goal. These efforts shall include but not be limited to the following:

1. Negotiate in good faith to attempt to finalize and execute a subcontract agreement with the SB committed to in the bid/proposal.
2. Efforts that can be documented to seek out and utilize additional SB suppliers and SB subcontractors when additional subcontractors are necessary to meet the overall goals and objectives.
3. Continue to provide assistance to SB subcontractors or suppliers in obtaining bonding, lines of credit, etc., if required by the Contractor.
4. Notify a SB in writing of any potential problem and attempts to resolve the problem prior to formally requesting the CHSRA's approval to substitute the SB.
5. As with all subcontractors, timely payment of all monies due and owed to SB subcontractors and suppliers in strict conformance with prompt payment and retainage provisions set forth in the program and contract.
6. The Contractor is advised not to count the participation of SB subcontractors towards the Contractor SB achievements until the subcontract amount being counted toward the goal has been paid to the SB.
7. Alert the CHSRA in a timely manner of any problems anticipated in attaining the SB participation goal committed to at award.
8. The Contractor may not terminate an approved SB subcontractor for convenience and perform the work of the terminated SB subcontractor with its own work forces or those of an affiliate, without the prior written consent from the CHSRA.
9. When a SB is terminated, or fails to complete its designated scope of work on the contract for any reason, the Contractor must make good faith efforts to find another SB subcontractor to substitute for the original SB. Refer to Section IV, Subpart D, item F for steps to comply with substituting and or terminated a listed SB.
10. Substitutions or additions of an approved SB subcontractor or change in any scope of work to be performed by the approved SB subcontractor must be requested in writing by the Contractor and approved by the CHSRA. The Contractor shall complete and submit the "Request For SB Subcontractor/Supplier Substitution."
11. Change in Contract Amount - The dollar amount of Change Orders or any other contract modifications that increase or decrease the work area in which SB participation has been committed shall be commensurately added to or subtracted from the respective total subcontract amount. Revised total contract dollar values shall be reflected in the monthly progress report submitted to the CHSRA with supporting evidence of an approved change.

12. Review the Contractor's monthly progress reports to determine whether the utilization of SB firms is consistent with the commitment the Contractor stated in its bid or proposal.

Each subcontractor shall also demonstrate compliance with the post award good faith efforts.

#### **IV.D. Counting SB Participation**

The standards of crediting SB participation will be in conformance with commercially useful standards and crediting provisions as set forth in State laws and in 49 CFR Part 26 regulations when compiling the SB data reports for DGS and USDOT.

The CHSRA will count SB participation towards overall and contract specific goals as provided in the solicitation specifications and subcontract contract specifications and in accordance with standards and provisions set forth within this program.

##### State Funded Contracts

The CHSRA shall only count SB participation towards the contract goals when the SBs provides evidence of its certification and is performing a Commercially Useful Function on any State funded contract (Government Codes 14837, 14838.6, 14839, 14842, and 14842.5, and Military and Veterans Codes 999 and 999.6).

The CHSRA shall use the California DGS certification eligibility standards for SB, DVBE and Micro-Business. The CHSRA shall use the DGS Directory at [www.dgs.ca.gov/pd/Programs/eprocure](http://www.dgs.ca.gov/pd/Programs/eprocure) to verify the listed SB's certification.

All certified SB firms that bid on or participate in a State-funded contract must perform a CUF on the contract. This is done to prevent businesses from acting as a "pass through" when identified as the prime bidder or when identified as a subcontractor, etc. If an SB is not performing a CUF on a contract, certification may be revoked as stated in Government Code § 14842.

A determination of CUF is required when an SB is involved and participates in a State-funded contract. The SB has to be responsible for a distinct element of the contract and normal business functions. They cannot further subcontract their distinct element of work.

All certified DVBE firms that bid on or participate in a State-funded contract must perform a CUF on the contract. This is done to prevent businesses from acting as a "pass through" when identified as participating on a State-funded contract. If a DVBE is not performing a CUF on a contract, the certification may be revoked as stated in the California Government Code § 14842 (3)(e). The DVBE firm must be responsible for a distinct element of the contract as its normal business functions.

Credit for DVBE participation as a Contractor will count as 100 percent of the contract price provided the DVBE prime is performing a CUF. Credit for participation of DVBE subcontractors, suppliers, or services will be 100 percent of the dollar value of the DVBE performance provided the DVBE is performing a CUF. State departments will evaluate the DVBE participation prior to the award of the contract in order to determine if the listed DVBE is performing a CUF and thus apply the appropriate DVBE credit. DVBE brokers awarded a contract under the DVBE goal provisions must disclose their broker status to the State department prior to contract award.

A certified SB or DVBE who fails to demonstrate performance of a CUF, when bidding as a Contractor, will result in that certified bidder being eliminated from consideration. Also, for SBs who are

participating as a subcontractor, failure to demonstrate performance of a CUF will result in the reported participation being removed. Furthermore, businesses who fraudulently obtain a certification as a SB for purposes of obtaining a State contract may be suspended from doing business with the State or Federal agencies.

Pursuant to Government Code § 14842, the following may be imposed on a business that obtains certification as a SB or a DVBE by having given incorrect, incomplete, or fraudulent information and has been awarded a contract to which it would not have been awarded otherwise:

1. Pay to the State any difference between the contract amount and what the State's costs would have been if the contract had been properly awarded.
2. Pay to the awarding State agency and the department an amount that is equal to the costs incurred to investigate the small business certification.
3. Be assessed a penalty in an amount of not more than ten percent of the amount of the contract involved.
4. The small business will be suspended from business with the State for a period of not less than three years and not more than ten years.

Failure to carry out the requirements of Section 999 of the Military and Veterans Code for DVBE firms will constitute a material breach of contract and may result in termination of the contract or other remedy that the CHSRA deems appropriate.

As found in Public Contract Code 10115.10n (a)(1), "It shall be unlawful for a person or firm to knowingly and with intent to defraud, fraudulently obtain ... aid another in fraudulently obtaining ... acceptance or certification as a minority, women, or disabled veteran business enterprise...(b) Any person who violates ... is guilty of a misdemeanor and shall be liable for a civil penalty..."

#### Federal Financial Assisted Contracts

The CHSRA shall only count DBE participation towards the overall and individual contract goals when the DBE provides evidence of its certification and is performing a commercially useful function on the CHSRA's USDOT funded contracts (49 CFR 26.55).

The CHSRA shall use the California Unified Certification Program (CUCP) certification eligibility standards for DBE. The CHSRA shall use the CUCP Directory at [www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm) to verify the listed DBE's certification.

The following guidelines apply in calculating DBE participation toward meeting established goals in accordance with 49 CFR Part 26.55:

- a) Only work proposed to be performed by a DBE's own work forces (including cost of supplies, materials and equipment leases) obtained by the DBE for the work of the contract, except supplies and equipment the subcontractor purchases and/or leases from the Contractor or its affiliate.
- b) When a DBE subcontracts part of its work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE subcontractor is itself a certified DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. A DBE should perform at least 30 percent of the total cost of its contract with its own workforce.

- c) In instances of joint venture, the joint venture may only count toward its DBE goal, the portion of work proposed to be performed by the DBE partnering firm, which meets certification, ownership and control standards.
- d) A Contractor may count toward its DBE goal, only expenditures to firms that are proposed to perform a commercially useful function on that contract. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing and supervising the work involved.
- e) A Contractor may count toward its DBE goal, 60 percent of its expenditures for materials and supplies required under the contract and obtained from a DBE regular dealer and 100 percent of such expenditures to a DBE manufacturer. For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials and supplies obtained by the Contractor. A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business.
- f) A Contractor may count towards its DBE goal, fees and commissions paid to DBE firms that are not manufacturers or regular dealers, provided that the fees or commissions are determined to be reasonable and not excessive, as compared with fees customarily allowed for similar services.
- g) Special Provisions for Trucking – The Contractor may count towards its goal, all transportation services provided by DBE trucking firms, who can demonstrate control of trucking operations for which it seeks credit and it owns, insures, and operates, using drivers it employs in the performance of the contract. The DBE must itself own and operate at least one fully licensed, insured, and operation truck used on the contract. The DBE trucking firm may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
- h) In cases where DBE certification has ceased during the performance period of the contract, although the Contractor will continue to report the dollar value of the worked performed to the CHSRA on the monthly Form 103, the CHSRA will not count the participation towards its overall goal.
- i) The CHSRA will not count the participation of DBE subcontractors toward a Contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

The Contractors shall also comply with the aforementioned provisions, as applicable, including those specified under the Design-Build Contract specification requirements.

For DBEs, as stated in 49 CFR Part 26.107(a) "...attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under

circumstance indicating a serious lack of business integrity or honesty, the Operating Administration may initiate suspension or debarment proceedings against the firm under 49 CFR Part 29.”

#### **IV.E. Substitution or Termination of a SB, DVBE or DBE on a Contract**

The CHSRA requires that a Contractor, or its subcontractors, not substitute or terminate a SB without the CHSRA’s prior written consent. This includes, but is not limited to, instances in which a Contractor or its subcontractor seeks to perform work originally designated for a SB with its own forces or those of an affiliate, a non-SB, or with another SB.

The CHSRA shall enforce the provisions of Public Contract Code § 4107 et seq and Military and Veterans Code § 999 et seq for proposed substitution of an SB or DVBE or any subcontractor.

The CHSRA will provide such written consent only if it agrees, for reasons stated in the concurrence document, that the Contractor and its subcontractor has good cause to substitute or terminate the SB. For purposes of this section, good cause includes the following circumstances:

- The listed subcontractor, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract for the scope of work specified in the subcontract’s bid and at the price specified in the subcontractor’s bid; when that written contract, based upon the general terms, conditions, plans, and specifications for the project involved or the terms of that subcontractor’s written bid, is presented to the subcontractor by the Contractor.
- The listed subcontractor becomes insolvent or the subject of an order for relief in bankruptcy.
- The listed subcontractor fails or refuses to perform the work of its subcontract.
- The listed subcontractor fails or refuses to meet the Contractor’s bond requirements as set forth in Public Contract Code 4108.
- The Contractor demonstrates to the CHSRA, subject to the further provisions set forth in Section 4107.5, that the name of the subcontractor was listed as a result of an inadvertent clerical error.
- The listed subcontractor is not licensed pursuant to the Contractor’s License laws.
- The CHSRA determines that the work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or the subcontractor is substantially delaying or disrupting the progress of the work.
- The listed subcontractor is ineligible to work on public works projects pursuant to Section 1777.1 or 1777.7 of the Labor Code.
- The CHSRA determines that a listed subcontractor is not a responsible contractor.
- The listed subcontractor voluntarily withdraws from the project and provides written notice of its withdrawal.
- Other documented good cause that compels the substitution or termination of the SB. Provided, that good cause does not exist if the Contractor seeks to substitute or to terminate a SB it relied upon to obtain the contract so that the Contractor can self-perform the work for which the SB was engaged or so that the Contractor can substitute another SB or non-SB contractor after contract award.

Prior to approval of the Contractor’s request for the substitution, the CHSRA shall give notice in writing to the subcontractor of the Contractor’s request to substitute and of the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor who has been so notified has five (5) working days within which to submit written objections to the substitution to the CHSRA. Failure to file these written objections constitutes the listed subcontractor’s consent to the substitution.

If written objections are filed, the CHSRA shall give notice in writing of at least five (5) working days to the listed subcontractor of a hearing by the CHSRA on the Contractor's request for substitution.

A Contractor may, subject to the approval of the DGS, replace a disabled veteran business enterprise identified by the Contractor in its bid or offer, pursuant to subdivision (a) of Military and Veterans § 999.10, with another DVBE. As an added step to ensure that Contractor's honor their commitments to use DVBE subcontractors and meet the commitment levels identified in bids, the following, or similar, language is to be included into the solicitations and resulting subcontract documents:

*"After award of a contract, the successful Contractor must use the DVBE subcontractor(s) and/or supplier(s) proposed in their bid or offer to the State unless a substitution is requested and is approved by the awarding department and the DGS. The California Code of Regulations Title II section 1896.64(c) and Public Contract Code § 4107 (for Public Works) provide the current requirements for awarding departments to approve the substitution of a DVBE subcontractor."*

*"Contractor understands and agrees that should award of this contract be based in part on their commitment to use the Disabled Veteran Business Enterprise (DVBE) subcontractor(s) identified in their bid or offer, per Military and Veterans Code 999.5 (e), a DVBE subcontractor may only be replaced by another DVBE subcontractor and must be approved by the Department of General Services. Changes to the scope of work that impact the DVBE subcontractor(s) identified in the bid or offer and approved DVBE substitutions will be documented by contract amendment. Failure of Contractor to seek substitution and adhere to the DVBE participation level identified in the bid or offer may be cause for contract termination, recovery of damages under rights and remedies due to the State, and penalties as outlined in Military and Veterans Code § 999.9; Public Contract Code (PCC) § 10115.10, or PCC § 4110 (applies to public works only)."*

The CHSRA shall follow the processes set forth in 2 CCR § 1894.64(c) and Public Contract Code § 4107 when a Contractor requests the substitution of a DVBE subcontractor with the added provisions that: 1) only another DVBE subcontractor shall be considered to replace a DVBE subcontractor, and 2) the awarding department shall obtain final approval to replace a DVBE subcontractor from the DGS.

Requests to replace a DVBE subcontractor must be amply documented to show that the replacement meets the criteria as previously specified. Documentation may include, but is not limited to the request, confirmation of receipt of the request, the subcontractor's objection and request for hearing and the final Statement of Decision. Requests and resulting amendments generated by the DVBE subcontractor substitution should be timely so as not to unreasonably delay the Contractor's performance of the contract, resulting in potential claims against the CHSRA for delay damages. Requests are to be sent electronically to [osdshelp@dgs.ca.gov](mailto:osdshelp@dgs.ca.gov).

#### Substitution or Termination of a listed DBE

The CHSRA will require a Contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the same extent needed to meet the contract goal established. The CHSRA will require the Contractor to notify the Contract Compliance Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

The Contractor must first obtain the written consent of the CHSRA before any Contractor can act on the substitute for the DBE. We require the Contractor to provide us with copies of the new or amended subcontracts. If the candidate subcontractor to be substituted is not a DBE, the CHSRA also requires the Contractor to submit documentation of their good faith efforts.

A DBE subcontractor listed in the Contractor's commitment [as required by 49 CFR Part § 26.53] may be substituted or terminated only with the CHSRA's prior written consent for good cause<sup>1</sup> that includes the DBE:

- fails or refuses to execute a written contract;
- fails or refuses to perform the work of its subcontract consistent with normal industry standards;<sup>2</sup> Good cause does not exist where failure or refusal to perform the work of the subcontract results from bad faith or discriminatory action of the Contractor;<sup>3</sup>
- fails or refuses to meet reasonable, nondiscriminatory bond requirements;
- becomes bankrupt, insolvent, or exhibits credit unworthiness;
- is ineligible to work because of suspension and debarment proceedings;
- is not a responsible subcontractor;
- voluntarily withdraws from the project and provides written notice of its withdrawal;
- is ineligible to receive DBE credit for the type of work required;
- owner dies or becomes disabled and is unable to complete its work; or
- other documented good cause that compels termination.<sup>4</sup>

Before requesting the CHSRA's consent for the proposed termination, the Contractor must give written notice of the proposal, including the reason for the request, to the DBE with a copy to the CHSRA. The DBE must be given five (5) days to respond. The notice period may be reduced if required by public necessity (e.g., safety).

In addition to post-award terminations, these provisions apply to pre-award deletions or substitutions of DBE firms put forward by proposers in negotiated procurements.

#### Failure to Secure Prior Approval to Substitute or Terminate a SB, DVBE or DBE

If the Contractor fails or refuses to comply in the time specified, the CHSRA may take appropriate actions, as prescribed in State laws and Federal regulations. The CHSRA's contracting office may issue an order stopping all or part of payment or work until satisfactory action has been taken.

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<sup>1</sup> Good cause does not exist if a Contractor seeks to terminate a DBE it relied upon to obtain the contract so it could self-perform the work or substitute another DBE or non-DBE firm. For example, such a request for termination could be the result of a Contractor imposing unreasonable demands on a DBE. See 76 Fed. Reg. 5085 (2011).

<sup>2</sup> Industry standards may vary among projects and could be higher for some projects than others. See 76 Fed. Reg. 5085 (2011).

<sup>3</sup> For example, this includes the failure of the Contractor to make timely payments or the unnecessary placing of obstacles in the path of the DBE's work. See 76 Fed. Reg. 5085 (2011).

<sup>4</sup> The CHSRA must document the basis for any such termination. The termination must be essential, not merely discretionary or advantageous. The CHSRA need not obtain DOT Operating Administration concurrence; however, FHWA, FTA and FAA retain the right to oversee such determinations. See 76 Fed. Reg. 5085 (2011).

## **Accountability**

The CHSRA will follow the accountability provisions in 49 CFR 26 to assure the FRA that it is committed to carry out the best practices of 49 CFR 26 to meet the USDOT intended goals and objectives of affording DBEs, including SBs a level playing field by which to actively bid/propose and successfully perform on the CHSRA's DOT assisted contracts.

If the CHSRA fails to meet its overall DBE goal at the end of the fiscal year, it will in conformance with USDOT guidance analyze the reasons for the shortfall and establish specific steps and milestones to correct problems identified in its analysis that will enable the CHSRA to meet its goal in the new fiscal year. The CHSRA must submit the analysis and corrective actions within 90 days of the end of the fiscal year for FRA approval.

If FRA approves the report, the CHSRA will be regarded as compliant with 49 CFR Part 26.47 for the remainder of the Federal fiscal year. FRA may impose conditions on its approval including, but not limited to: modifications to the overall goal methodology, changes to the race-conscious/race-neutral split, or introduction of additional race-neutral or race-conscious measures, where applicable.

The CHSRA may be regarded as being in non-compliance for failing to implement its program in good faith if: it does not submit its analysis and corrective actions within 90 days of the end of the fiscal year, FRA disapproves of its analysis or corrective actions, or it does not fully implement the corrective actions or conditions that FRA has imposed.

If it comes to the attention of FRA via the DBE report or other means that it is likely that the CHSRA will not meet its overall goal at the end of the year, FRA may require further good faith efforts such as modifying the SB Program, the overall goal and or introducing additional race-neutral measures for the remainder of the Federal fiscal year. [49 CFR Part 26.47(c) and (d)].



## **V. SUBPART E – DESIGN-BUILD PROVISIONS**

### **SB PROGRAM REQUIREMENTS-- SPECIFIC TO DESIGN-BUILD CONTRACTS**

The CHSRA recognizes certain modifications are necessary to adapt the program for use in connection with design-build contracts, and has therefore established certain procedures applicable to design-build contracts under the SB Program. Subpart E Design-Build provisions represents the additional requirements the selected Contractor must comply with to meet the spirit and intent of the CHSRA's SB Program.

The CHSRA has established an SB overall project goal of 30 percent for each of its Design-Build projects, to be achieved through the utilization, in any combination and at any tier level, of firms who are certified as:

- ▶ Small Business
- ▶ Disabled Veteran Business Enterprises
- ▶ Disadvantaged Business Enterprise
- ▶ Micro-Business

The Design-Build Contractor will be responsible for establishing subsequent contract goals, as appropriate, for the subcontracts it lets, in conformance with 49 CFR Part 26.53 best practices and the CHSRA's SB Program. The CHSRA will maintain oversight of the design-build Contractor's activities to ensure activities are conducted in a manner consistent with the requirements of the CHSRA's SB Program and that of 49 CFR Part 26, as applicable.

In accordance with Executive Order S-02-06 and 49 CFR Part 26, best practices, the following are hereby incorporated into the Design Build Provisions.

#### **V.A. SB Performance Plan Program Objectives**

The selected Contractor shall establish and implement a Small Business Performance Plan, which shall incorporate the best practices of the CHSRA's SB Program. The SB Performance Plan shall be subject to approval by the CHSRA. If requested by the CHSRA either before or after award, the Contractor shall revise its SB Performance Plan to incorporate the CHSRA's comments. The SB Performance Plan shall include:

#### **V.B. Key Personnel (Contractor Small Business Officer)**

The Contractor Small Business Officer (SBO) will report directly to the Contractor's Project Executive Director and in this capacity shall be responsible for developing, implementing, monitoring and managing the day to day operations of the Contractor's SB Performance Plan in compliance with the CHSRA's Small Business Program and provisions of the Executive Order S-02-06, Title VI of the Civil Rights Act of 1964 and Title 49 CFR Part 26, where applicable.

The SBO will coordinate all elements of the Performance Plan to effectively track, monitor and report on SB utilization throughout the duration of the contract. The SBO will coordinate efforts at all subcontractor tier levels to institute innovative strategies and remedies to meet the Contractor's SB goal commitments and the intended goals and objectives of the CHSRA's SB Program. The SBO shall continue to maintain independent and direct access to the Project Executive Director concerning all SB Program and corresponding performance matters. The SBO shall develop and maintain good communication and working relationships with the CHSRA representatives and the small and general

business community. The SBO may be a subconsultant to the Contractor and he or she may represent the Contractor as the SBO.

#### SBO Duties and Responsibilities

The SBO shall have appropriate resources to assist in the administration of the Contractor's SB Performance Plan. The duties and responsibilities include, but are not limited to the following:

- Serves as the Contractor's SB Officer.
- Develops, implements and monitors, the SB Performance Plan, keeping it up-to-date with the current business environment and the latest revisions to the applicable State and Federal laws and regulations, ensuring the Performance Plan is responsive to and in compliance with the regulations, including, but not limited to, the Executive Order S-02-06, Title VI and 49 CFR Part 26 best practices.
- Ensures the Contractor's employees and its subcontractors under contract, understand and are fully acclimated to the goals and objectives and ensure that the responsibility to comply are treated with the same priority as any other contractual legal obligation.
- Gathers and reports on progress in narrative form by outlining good faith efforts undertaken within the respective reporting period and providing statistical information on SB/DVBE/DBE and Micro-Business utilization on a monthly basis or as required by the CHSRA.
- Reviews third party contracts and purchase requisitions for compliance with this program.
- Ensures that bid notices and requests for proposals are readily accessible and timely disseminated to small business community.
- Monitor's and analyzes the Contractor's progress toward meeting its goal commitments and makes adjustments as necessary to remedy deficiencies.
- Participates in SB meetings.
- Attends quarterly meetings with the CHSRA's SB Liaison Officer to identify strategies to achieve the goals.
- Advises the Project Executive Director on SB matters and achievements.
- Plans and facilitates SB training seminars to promote understanding and acclimation of small business communities regarding contracting opportunities and contract administration.
- Conducts business outreach and assists all SBs in obtaining the necessary information to compete on contracts by providing guidance and direction, and advising SBs on where to seek management, technical business development expertise, bonding, lines of credit and other supportive services.
- Provides guidance and assistance to subconsultants and construction subcontractors on the importance of achieving, tracking and reporting their SB participation attainments.
- Reviews SB participation reports from subconsultants and construction subcontractors and makes recommendations for greater SB attainment, where applicable.
- Ensures coordination of the SB Program deliverables with the CHSRA, local agencies and the business community.
- Establishes and maintains a good working relationship with SBs, local agencies, non-SBs, and business organizations/associations.
- Ensure only firms meeting eligibility standards participate and count towards the SB goals.
- Ensure compliance Federal EEO Clause provisions as set forth under Title 41 CFR Part 60 et seq.
- Ensure compliance with U.S. Department of Labor provisions as set forth under Office of Federal Contract Compliance Program – Mega Project.

- Perform other related duties as necessary to meet CHSRA's SB Program goals and objectives.

Additional elements of the SB Performance Plan:

- ▶ A policy statement, signed by Contractor's Authorized Representative, which expresses Contractor's commitment to utilize SBs in all aspects of the Work, outlines the various levels of responsibility, and states the objectives of the SB Performance Plan. Contractor shall obtain the written commitment of all Contractor related entities to comply with and advance the intent of the policy statement.
- ▶ An affidavit that the Contractor will meet or exceed the overall SB project goal for the design-build contract or will exercise good faith efforts to do so. The good faith effort determination of acceptance will be made by the CHSRA. The Overall Project SB Goal Affidavit shall be signed by the Contractor's authorized representative (party with the authority to bind the Proposer). See Attachment 6.
- ▶ Contractor's designation of a person responsible for the SB Performance Plan (refer to the SBO duties and responsibilities) to administer the program and a description of the authority, responsibility, and duties of the SBO and support staff. The SBO and staff are responsible for developing, managing, and implementing the SB Performance Plan on a day-to-day basis, for providing technical assistance to SBs, and for disseminating information on available business opportunities so that SBs are provided an equitable opportunity to engage in work as subcontractors or subconsultants. The SBO shall work in close coordination with the CHSRA, and shall report quarterly on Contractor's success in attaining the established SB participation goals during the Design work and the construction period; and
- ▶ A description of proposed actions to facilitate SB engagement in work as subcontractors and subconsultants, such as:
  - a) On-going quarterly strategic planning sessions with the CHSRA to establish goals for specific bid item groups by reviewing the work, available firms, strategies, anticipated obstacles and means to overcome obstacles;
  - b) Conduct bid-item specific outreach meetings in coordination with the CHSRA for SB firms to highlight current and upcoming appropriate subcontracting opportunities;
  - c) Solicit statements of qualification, proposals, and/or price quotations from qualified SB firms and arrange a time for the review of qualifications, plans, quantities, specifications, and delivery schedules, and for the preparation and presentation of proposals and/or price quotations;
  - d) Provide assistance, in coordination with the CHSRA, to SB firms so that these may overcome barriers such as the inability to obtain bonding, insurance, financing, or technical assistance;
  - e) Develop and conduct information and communication programs or workshops, in coordination with the CHSRA, on contracting procedures and specific contracting opportunities in a timely manner;
  - f) Encourage eligible SB firms to apply for certification with the CHSRA; and
  - g) Contact local/regional SB, Disadvantaged, Underutilized, Trade-Specific Contractor Associations and appropriate city agencies with programs for disadvantaged individuals for assistance in recruiting and encouraging eligible SB firms to apply for certification with DGS and the CUCP.

- A detailed description of the planned methodology for achieving the SB goal as stated in the contract, including a description of the good faith effort the Design-Build Contractor intends to undertake to achieve the overall project goal. This plan shall include the activities that fulfill the requirements and guidance in the CHSRA's SB Program, Subpart D, "Goals, Good Faith Efforts and Counting SB Participation" developed in accordance with 49 CFR Part 26.53 and Appendix A, where applicable.

## **V.C. Meeting Established SB Goal**

### Overall SB Project Goal

It is the policy of the CHSRA to ensure that SBs, DVBEs, DBEs and MBs are provided fair and equitable access and the maximum practicable opportunities to participate in all phases of the CHSRA's contracting program. The CHSRA has committed to and has given its assurance to its funding partners that it will employ best practices and develop a Small Business Program consistent with and pursuant to the requirements set forth in the California Executive Order S-02-06; Title VI of the Civil Rights Act of 1964 and 49 CFR Part 26 best practices, as permitted by law.

This Design-Build project is subject to an Overall SB project goal of **30 percent**.

The Contractor shall include an executed Affidavit confirming that the Contractor will aggressively exercise good faith efforts to the satisfaction of the CHSRA to obtain SB/DVBE/DBE and Micro Business commitments equal to or exceeding the SB participation goal.

The Contractor shall be required to:

- Develop innovative contracting and procurement strategies that advance the participation SBEs/DVBEs/DBEs and Micro-Businesses;
- Report monthly on progress of SBE/DVBE/DBE and Micro-Business utilization (goal commitments and attainments);
- Make adjustments to the SB Performance Plan as necessary to meet goals and intended objectives of the CHSRA SB Program;
- Hold quarterly strategic planning sessions to establish goals for specific bid items, identify available SB firms, anticipate obstacles and means to overcome these obstacles, including identifying resources that aid in building capacity;
- Develop communication protocols and outreach instruments that provide ready access and effective means of timely disseminating information on contracting opportunities to the impacted business communities;
- Conduct bid-item specific outreach meetings to highlight current and upcoming subcontracting possibilities and provide for networking and marketing opportunities with other prospective proposers and bidders;
- Provide assistance to SBs/DVBEs/DBEs and Micro-Businesses to overcome barriers such as inability to obtain bonding, insurance, access capital or technical assistance;
- Implement a SB/Supportive Services Program to leverage the CHSRA SB Program;
- Develop and conduct information and communication programs on contracting opportunities, procedures and contract administration to facilitate acclimation;
- Encourage eligible SBs/DVBEs/DBEs and Micro-Businesses to apply for certification;

- Contact, establish and maintain good working relations with SBs/DVBES/DBEs/MBEs/WBES, Micro-Businesses, trade and professional groups, associations and general contracting industry; and
- Any other good faith efforts that promote meeting participation goals objectives.

The dollar amount of any Supplemental Agreement or any other contract modification that increases the dollar amounts of the contract or any subcontract or subconsultant agreement will be subject to the SB goal established for this project, and the Contractor and its subcontractors and subconsultants will be required to solicit SB participation for such increases. Revised total contract dollar values shall be reflected in the Form 103 submitted on a monthly basis to the CHSRA.

#### **V.D. Contractor Good Faith Efforts and Reporting Obligations**

Ongoing good faith efforts, as described in the CHSRA SB Program, Subpart D “Goals, Good Faith Efforts and Counting SB Participation,” will be monitored by the CHSRA throughout the duration of the design-build project based on the following Contractor submittals:

- Following the award of the design-build contract, the Contractor will be required to submit a “Monthly SB Subcontractors Paid Report Summary and Payment Verification Form” (Form 103) to the CHSRA no later than the 15th of each month (and at more frequent intervals if requested by the CHSRA). The Form 103 Report is required to be submitted during both the design and construction phases of the project.
- Following award of a design-build contract, the Contractor will be required to submit “Monthly Narrative DBE Progress Reports” to the CHSRA with each invoice and an annual report on or before August 1 of each year of the design-build contract term. Each report must include a narrative summary stating whether the Contractor is on target with respect to the SB goal set forth in the design-build contract, whether the goal has been exceeded (stating the amount of the excess), or whether the Contractor is behind target (stating the amount of the deficit) and substantiate such attainments. If any progress report shows that the Contractor is behind target, or if it anticipates being behind target, the report must include satisfactory evidence of past good faith efforts undertaken and must specify additional good faith efforts planned to be taken to remedy deficiencies towards meeting the SB goal in accordance with the CHSRA’s SB Program. Following review and approval of such proposed additional good faith efforts by the CHSRA, the Contractor shall modify its SB Performance Plan accordingly.
- The Contractor will promptly provide the CHSRA with the information required by the CHSRA in its Substitution and/or Request to Add SB form upon selection of any SB subcontractor not previously identified by the Contractor. During the course of the contract, differences must be explained and resolved by either making corrections or requesting a substitution. The CHSRA must approve all SB substitution requests with written consent prior to implementing any substitution.
- The Contractor must fully comply with State laws and Federal regulations regarding Prompt Payment and Retainage, Subpart C- Administrative Requirements provisions of the SB Program. The Contractor must readily provide evidence of such at the request of the CHSRA.

## CONSEQUENCES OF NON-COMPLIANCE

- (1) **BREACH OF CONTRACT** - Failure to carry out the SB requirements specified in the Contract Documents constitutes a breach of contract. The CHSRA will notify the Contractor and the USDOT of such breach, including notification that the breach may result in termination of the Contract by CHSRA or imposition of other appropriate sanctions. This notice is given pursuant to 49 CFR Part 26, where applicable. For purposes of this section, timely submittal means received by the CHSRA by the close of business on the date noted in the contract provisions of the following month.
- (2) **NOTICE** - If the Contractor or any subcontractor, consultant, subconsultant, supplier or service provider is deemed to be in non-compliance, the Contractor will be informed in writing, by certified mail by the CHSRA that sanctions may be imposed for failure to meet SB utilization goals and/or submit documentation of good faith efforts. The notice will state the specific sanction to be imposed.

## SANCTIONS

If it is determined that the Contractor's failure to meet all or part of the SB goal is due to the Contractor's inadequate good faith efforts throughout the life of the contract, including failure to submit required good faith efforts information and documentation, the Contractor may be subject to contract termination.

## **VI.SUBPART F – SB SUPPORTIVE SERVICES, RESOURCE PARTNERS AND PARTNERING**

### **VI.A. Supportive Services**

The CHSRA and Contractor agree to implement a SB Supportive Services (SB/SS) Program.

The SB/SS Program will assist active SBs in securing CHSRA and subsequent Contractor State funded and Federal funded contracts and increase SB capacity to bid on and win contracts. The SB/SS will serve SBs in program services/activities designed to enhance business growth and development and to increase marketability.

The CHSRA and Contractor will work closely with the Small Business Development Centers (SBDCs) and the USDOT OSDBU to direct SB to assistance on business development, capital, and bonding assistance. The CHSRA may consider adopting a more comprehensive Business Development Program and/or a Mentor-Protégé Program in accordance with guidance provided by USDOT applicable Appendices C and D of 49 CFR Part 26. See Attachment 7. [49 CFR 26.35 and 26.51(b)].

The SB/SS model will enlist a partnering Memorandum of Understanding (MOU) (See Attachment 8) with industry, governments and community partners with the goal of leveraging mutual strengths and services, to assist SB in the areas of:

- ▶ Certification
- ▶ Capacity Building
- ▶ Communications
- ▶ Partnering
- ▶ Keys to marketing and negotiations
- ▶ Bonding and insurance
- ▶ Contract administration, including preparing schedules of values
- ▶ Access to capital
- ▶ Business counseling and training
- ▶ How to do Business with the CHSRA

These important program elements are designed to help foster and grow small businesses toward increasing their meaningful participation and success in all phases of the CHSRA's contracting program.

### **VI.B. Resource Partners**

The State of California has numerous resources available to assist small businesses. The CHSRA will work closely with existing small business development and technical assistance resource centers and enter into partnering MOUs to increase SBs access and utilization of these resources with the goal of meeting small business participation goals and building their capacity to bid.

The partners will include and not be limited to:

- ▶ California Department of General Services
- ▶ Small Business Administration
- ▶ California Department of Transportation
- ▶ Federal Technology Center
- ▶ Small Business Development Centers
- ▶ Governor's Office of Economic Development

- ▶ Associated General Contractors of California
- ▶ American Council of Engineering Companies
- ▶ Small Business Association
- ▶ Disabled Veteran Business Alliance
- ▶ Associated of Professionals and Contractors of California
- ▶ Minority Chambers of Commerce
- ▶ Career Technical Education
- ▶ Employment Development Department

#### **VI.C. Partnering**

Among the SS Program is the CHSRA commitment to “Partnering” which is designed to establish long term and harmonize relationships, at all levels of the contracting team towards achieving cohesiveness and mutual goals in delivering the project.

Partnering workshops will serve to identify key project issues; risk management strategies; and build partnering processes and structure, communication protocols and dispute resolution processes.

The CHSRA will institute a requirement to facilitate Partnering workshops and sessions on its Design Build contracts which will be afforded to the entire contracting team’s participation regardless of subcontracting tier or industry.

The Partnering contract specifications are under consideration.



## **VII. SUBPART G WORKFORCE DEVELOPMENT PARTNERS**

The high speed train system will generate 600,000 construction related jobs over the life of the project. The CHSRA will work diligently to ensure maximum opportunities are afforded to all.

### **VII.A. Workforce Investment Act**

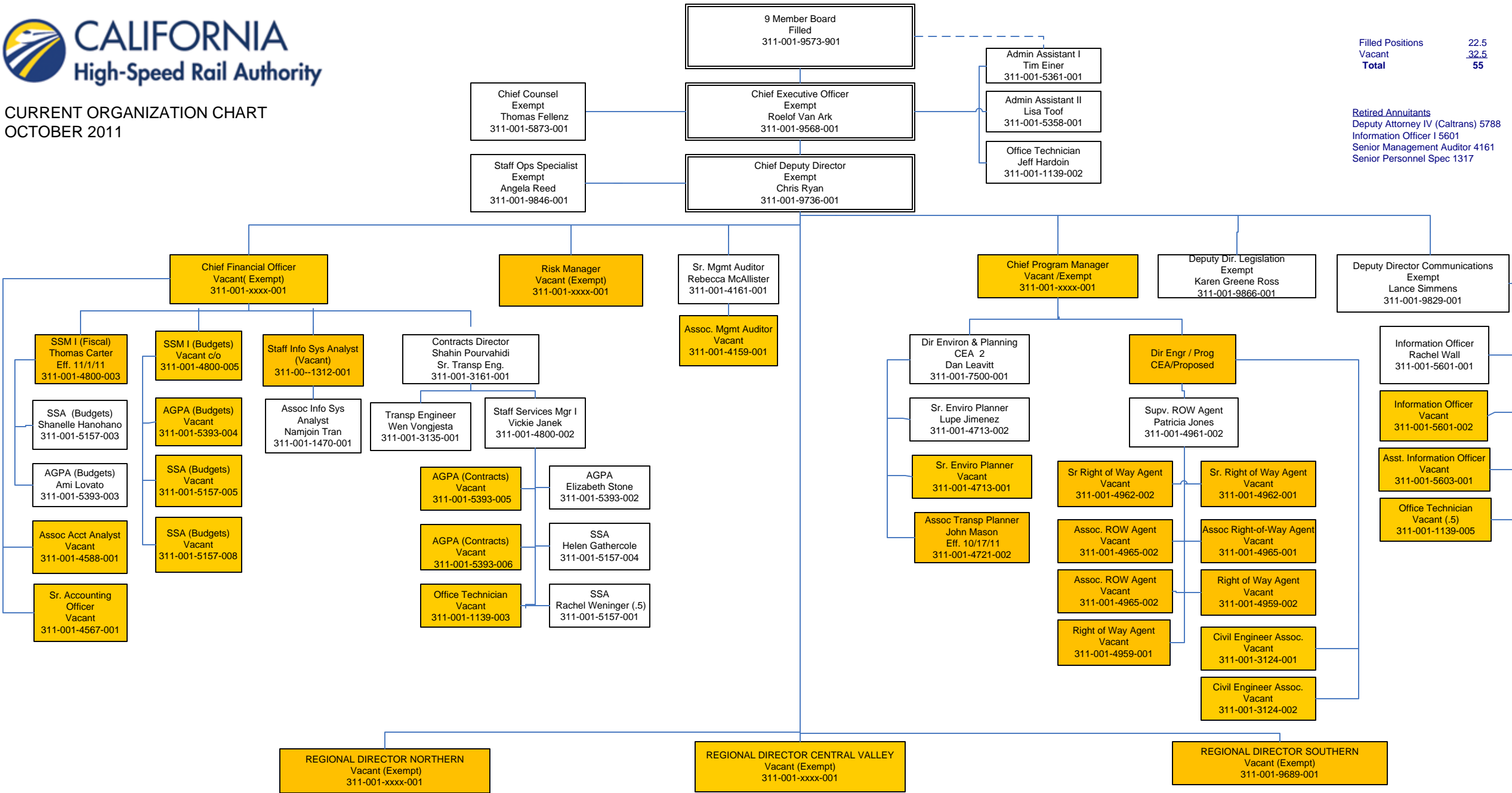
A key component to the workforce development is the Federal Workforce Investment Act (WIA), which offers a comprehensive range of workforce development activities through statewide and local organizations. Available workforce development activities provided in local communities can benefit job seekers, laid off workers, youth, incumbent workers, new entrants to the workforce, veterans, persons with disabilities, and employers.

The CHSRA and its Contractors will collaborate with the local WIA offices to ensure California citizens have an opportunity to seek out and obtain employment opportunities on the project. The collaboration with the local WIA offices is to promote an increase in the employment, job retention, earnings, and occupational skills improvement. This, in turn, improves the quality of the workforce, reduces welfare dependency, and improves the productivity and competitiveness of the nation.

The Workforce Development Partners MOU is under development.



CURRENT ORGANIZATION CHART  
OCTOBER 2011



Filled Positions 22.5  
Vacant 32.5  
**Total 55**

Retired Annuitants  
Deputy Attorney IV (Caltrans) 5788  
Information Officer I 5601  
Senior Management Auditor 4161  
Senior Personnel Spec 1317

VACANT PSN

As of October 13, 2011

CHSRA Current Organization Chart	
Approved: Roelof van Ark	Date:

**STD 810 Contracting Activity Report Form (Rev. June 2008)**  
**CONTRACTING ACTIVITY REPORT**
**STATE OF CALIFORNIA-DEPARTMENT OF GENERAL SERVICES**  
**PROCUREMENT DIVISION**

		<b>Fiscal Year or Midyear:</b>				<b>Year of report:</b>					
<b>Agency:</b>						<b>Department:</b>					
<b>CONTRACTING ACTIVITY CATEGORY</b>	<b>Part 1</b>					<b>Part 2</b>					
	Certified Disabled Veteran Business Enterprise (DVBE) Participation in State Contracting Activity					Certified Small Business (SB) / Microbusiness (MB) Participation in State Contracting Activity					
	TOTAL CONTRACT AWARDS					TOTAL CONTRACT AWARDS					
	Total Contract Dollars*	Total \$ to DVBE Prime Contractors	Total \$ to DVBE Sub-Contractors	Total DVBE Prime & Subs \$	Percentage (Column D divided by Column A)	Total Contract Dollars*	Total \$ to SB/MB Prime Contractors	Total \$ to SB/MB Sub-Contractors	Total SB/MB Contract Dollars	Percentage (Column J divided by Column G)	
	<b>A</b>	<b>B</b>	<b>C</b>	<b>D (B+C)</b>	<b>E (D/A)</b>	<b>F</b>	<b>G</b>	<b>H</b>	<b>I</b>	<b>J (H+I)</b>	<b>K</b>
1. Goods (Non-IT)	\$ -	\$ -	\$ -	\$0	0.00%	\$0	SB \$ -	SB \$ -	SB \$0	SB 0.00%	
2. Services** (Non-IT)	\$ -	\$ -	\$ -	\$0	0.00%	\$0	SB \$ -	SB \$ -	SB \$0	SB 0.00%	
3. Construction	\$ -	\$ -	\$ -	\$0	0.00%	\$0	SB \$ -	SB \$ -	SB \$0	SB 0.00%	
4. IT (Goods & Services)	\$ -	\$ -	\$ -	\$0	0.00%	\$0	SB \$ -	SB \$ -	SB \$0	SB 0.00%	
5. CALCard Data	\$ -			\$ -	0.00%	\$0			SB \$ -	SB 0.00%	
<b>TOTALS</b>	\$0	\$0	\$0	\$0	0.00%	\$0	SB \$0	SB \$0	SB \$0	SB 0.00%	
				<b>DVBE</b>						<b>SB</b>	<b>MB</b>
<b>TOTAL NUMBER OF DVBE CONTRACTS:</b>						<b>TOTAL NUMBER OF SB/MB CONTRACTS:</b>					
<b>Comments:</b>											
<b>Preparer's Information:</b>					<b>Approver's Information</b>						
Name (Print):					Name (Print):						
Title:					Title:						
Signature:				Date:		Signature:				Date:	
Telephone			Fax:			Telephone:			Fax:		
Email Address:					Email Address:						
Street Address:					City:				Zip:		
*The amounts shown in Columns A and G should be the same. If not, submit an explanation with this report. **Includes Architect and Engineering Services (A&E) DVBE = Disabled Veteran Business Enterprise      SB = Small Business      MB = Microbusiness						<b>Return Annual and Mid-Year Department Reports To:</b> Department of General Services Procurement Division Attn: Reports Coordinator 707 3rd Street, 1st Floor, Room 400, IMS Z-1, MS 204 West Sacramento, CA 95605					
<b>INCLUDE STD 810 Supplemental Report, STD 810 A Infrastructure Bond Acts Report, Consulting Services Report and Ethnicity, Race and Gender Reports with submission of the annual report.</b>											

<b>UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS</b>									
<b>**Please refer to the Instructions sheet for directions on filling out this form**</b>									
1. Submitted to (check only one): <input type="checkbox"/> FHWA <input type="checkbox"/> FAA <input type="checkbox"/> FTA--Vendor Number _____									
2. AIP Numbers (FAA Recipients Only):									
3. Federal fiscal year in which reporting period falls: FY _____					4. Date This Report Submitted: _____				
5. Reporting Period		<input type="checkbox"/> Report due June 1 (for period Oct. 1-Mar. 31)				<input type="checkbox"/> Report due Dec. 1 (for period April 1-Sept. 30)			
6. Name of Recipient: _____									
7. Annual DBE Goal(s): Race Conscious Goal _____ % Race Neutral Goal _____ % OVERALL Goal _____ %									
<b>AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD</b> <small>(total contracts and subcontracts awarded or committed during this reporting period)</small>	A	B	C	D	E	F	G	H	I
	Total Dollars	Total Number	Total to DBEs (dollars)	Total to DBEs (number)	Total to DBEs /Race Conscious (dollars)	Total to DBEs/Race Conscious (number)	Total to DBEs/Race Neutral (dollars)	Total to DBEs/Race Neutral (number)	Percentage of total dollars to DBEs
8. Prime contracts awarded this period									
9. Subcontracts awarded/committed this period									
<b>TOTAL</b>									
<b>DBE AWARDS/COMMITMENTS THIS REPORTING PERIOD-BREAKDOWN BY ETHNICITY &amp; GENDER</b>	A	B	C	D	E	F	G	H	I
	Black American	Hispanic American	Native American	Subcont. Asian American	Asian-Pacific American	Non-Minority Women	Other (i.e. not of any other group listed here)	TOTALS (for this reporting period only)	Year-End TOTALS
10. Total Number of Contracts (Prime and Sub)									
11. Total Dollar Value									
<b>ACTUAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD</b>	A	B	C	D	E				
	Number of Prime Contracts Completed	Total Dollar Value of Prime Contracts Completed	DBE Participation Needed to Meet Goal (Dollars)	Total DBE Participation (Dollars)	Percentage of Total DBE Participation				
12. Race Conscious									
13. Race Neutral									
14. Totals									
15. Submitted by (Print Name of Authorized Representative)					16. Signature of Authorized Representative				
17. Phone Number:					18. Fax Number:				

# MONTHLY SB SUBCONTRACTORS PAID REPORT SUMMARY AND PAYMENT VERIFICATION (Form 103)

Reporting Period (month): \_\_\_\_\_, 20 \_\_\_\_

ATT

Contract/Project Number: \_\_\_\_\_

Report Number: \_\_\_\_\_

Project Name: \_\_\_\_\_

Original Contract Award Amount: \$ \_\_\_\_\_

Contract Award Date: \_\_\_\_\_

Current Contract Value: \$ \_\_\_\_\_

Master Contractor Name: \_\_\_\_\_

% of Project Complete: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

SB Goal: \_\_\_\_\_% (% of total Contract)

Total \$ Paid to Master Contractor to date: \_\_\_\_\_

Date of Last Progress Payment: \_\_\_\_\_

SB Commitment: \_\_\_\_\_%

Payment to Master Contractor this period: \_\_\_\_\_

Total \$ Paid to

SB Goal Attainment to date: \_\_\_\_\_%

Total \$ Paid to SBs this period: \_\_\_\_\_

Sub to date: \_\_\_\_\_

SBE SUB CONTRACTORS	\$ Amount paid this Month Date Issued	\$ Amount Paid to Date	Type of Work Performed (Scope)	Original \$ Amount Committed to DBE at Award	\$ +/- resulting from Change Order Activity	% of Work Complete	% of Retention Withheld
Name: _____							
Address: _____							
City, State, Zip Code: _____							
Telephone Number: ( ) _____							
Subcontractor <sup>1</sup> Broker <sup>1</sup>							
Supplier: Regular Dealer <sup>1</sup> or Manufacturer <sup>1</sup>							
( ) SB ( ) DVBE ( ) DBE ( ) MB ( ) MINORITY ( ) WOMEN							
Name: _____							
Address: _____							
City, State, Zip Code: _____							
Telephone Number: ( ) _____							
Subcontractor <sup>1</sup> Broker <sup>1</sup>							
Supplier: Regular Dealer <sup>1</sup> or Manufacturer <sup>1</sup>							
( ) SB ( ) DVBE ( ) DBE ( ) MB ( ) MINORITY ( ) WOMEN							
Name: _____							
Address: _____							
City, State, Zip Code: _____							
Telephone Number: ( ) _____							
Subcontractor <sup>1</sup> Broker <sup>1</sup>							
Supplier: Regular Dealer <sup>1</sup> or Manufacturer <sup>1</sup>							
( ) SB ( ) DVBE ( ) DBE ( ) MB ( ) MINORITY ( ) WOMEN							

By my signature, I hereby attest that we have complied with all SB Program requirements , including prompt payment and retainage provisions.

Authorized Binding Title: \_\_\_\_\_

Authorized Binding Signature: \_\_\_\_\_

If necessary, this form can be duplicated and/or modified; however, it must contain all requested data fields.

## 49 CFR PART 26 -- Appendix A to Part 26 -- Guidance Concerning Good Faith Efforts

- I. When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.
- II. In any situation in which you have established a contract goal, part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.
- III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring *bona fide* good faith efforts.
- IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.
  - A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
  - B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
  - C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
    1. Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
    2. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
  - D. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
  - E. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
  - F. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
  - G. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- V. In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

## OFFEROR'S OVERALL PROJECT SB GOAL AFFIDAVIT

STATE OF \_\_\_\_\_ )  
 )  
 COUNTY OF \_\_\_\_\_ )

The undersigned, being first duly sworn, deposes and says that:

\_\_\_\_\_ is the Official Representative of \_\_\_\_\_.  
 (Contact Name) (Offeror's Name)  
 the Offeror submitting the foregoing Proposal. *[If the Offeror has not yet been formed, modify this form as appropriate to include the names of all of the Principal Participants and to indicate that the Official Representative is signing the form on behalf of all of the Principal Participants]*

The Offeror has carefully examined all documents that form this Request for Qualifications and is aware that California High Speed Rail Authority (Authority) has established an Overall Project Small Business goal of 30%, inclusive of Small Businesses, Disabled Veteran Business Enterprises, Disadvantaged Business Enterprises and Micro-Businesses, for Construction Package #1 of the Initial Construction Section of the California High Speed Train System, in conformance with Executive Order S-02-06, Title VI of the Civil Rights Act of 1964 and 49 CFR Part 26, where applicable.

The Offeror will aggressively exercise good faith efforts to the satisfaction of the Authority to meet the Overall Project Small Business goal and corresponding requirements which will be set forth in the Request for Proposal documents.

\_\_\_\_\_  
 (Signature)

\_\_\_\_\_  
 (Name Printed)

\_\_\_\_\_  
 (Title)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
 Notary Public in and for said County and State  
 [Seal]

My commission expires: \_\_\_\_\_.

## 49 CFR Part 26 Appendix C to Part 26 -- DBE Business Development Program Guidelines

The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from the recipient.

- A. Each firm that participates in a recipient's business development program (BDP) program is subject to a program term determined by the recipient. The term should consist of two stages; a developmental stage and a transitional stage.
- B. In order for a firm to remain eligible for program participation, it must continue to meet all eligibility criteria contained in part 26.
- C. By no later than 6 months of program entry, the participant should develop and submit to the recipient a comprehensive business plan setting forth the participant's business targets, objectives and goals. The participant will not be eligible for program benefits until such business plan is submitted and approved by the recipient. The approved business plan will constitute the participant's short and long term goals and the strategy for developmental growth to the point of economic viability in non-traditional areas of work and/or work outside the DBE program.
- D. The business plan should contain at least the following:
  1. An analysis of market potential, competitive environment and other business analyses estimating the program participant's prospects for profitable operation during the term of program participation and after graduation from the program.
  2. An analysis of the firm's strengths and weaknesses, with particular attention paid to the means of correcting any financial, managerial, technical, or labor conditions which could impede the participant from receiving contracts other than those in traditional areas of DBE participation.
  3. Specific targets, objectives, and goals for the business development of the participant during the next two years, utilizing the results of the analysis conducted pursuant to paragraphs (C) and (D)(1) of this appendix;
  4. Estimates of contract awards from the DBE program and from other sources which are needed to meet the objectives and goals for the years covered by the business plan; and
  5. Such other information as the recipient may require.
- E. Each participant should annually review its currently approved business plan with the recipient and modify the plan as may be appropriate to account for any changes in the firm's structure and redefined needs. The currently approved plan should be considered the applicable plan for all program purposes until the recipient approves in writing a modified plan. The recipient should establish an anniversary date for review of the participant's business plan and contract forecasts.
- F. Each participant should annually forecast in writing its need for contract awards for the next program year and the succeeding program year during the review of its business plan conducted under paragraph (E) of this appendix. Such forecast should be included in the participant's business plan. The forecast should include:
  1. The aggregate dollar value of contracts to be sought under the DBE program, reflecting compliance with the business plan;
  2. The aggregate dollar value of contracts to be sought in areas other than traditional areas of DBE participation;
  3. The types of contract opportunities being sought, based on the firm's primary line of business; and
  4. Such other information as may be requested by the recipient to aid in providing effective business development assistance to the participant.
- G. Program participation is divided into two stages; (1) a developmental stage and (2) a transitional stage. The developmental stage is designed to assist participants to overcome their social and economic disadvantage by providing such assistance as may be necessary and appropriate to enable them to access relevant markets and strengthen their financial and managerial skills. The transitional stage of program participation follows the developmental stage and is designed to assist participants to overcome, insofar as practical, their social and economic disadvantage and to prepare the participant for leaving the program.
- H. The length of service in the program term should not be a pre-set time frame for either the developmental or transitional stages but should be figured on the number of years considered necessary in normal progression of achieving the firm's established goals and objectives. The setting of such time could be factored on such items as, but not limited to, the number of contracts, aggregate amount of the contract received, years in business, growth potential, etc.
- I. Beginning in the first year of the transitional stage of program participation, each participant should annually submit for inclusion in its business plan a transition management plan outlining specific steps to promote profitable business operations in areas other than traditional areas of DBE participation after graduation from the program. The transition management plan should be submitted to the recipient at the same time other modifications are submitted pursuant to the annual review under paragraph (E) of this section. The plan should set forth the same information as required under paragraph (F) of steps the participant will take to continue its business development after the expiration of its program term.
- J. When a participant is recognized as successfully completing the program by substantially achieving the targets, objectives and goals set forth in its program term, and has demonstrated the ability to compete in the marketplace, its further participation within the program may be determined by the recipient.



- K. In determining whether a concern has substantially achieved the goals and objectives of its business plan, the following factors, among others, should be considered by the recipient:
  - 1. Profitability;
  - 2. Sales, including improved ratio of non-traditional contracts to traditional-type contracts;
  - 3. Net worth, financial ratios, working capital, capitalization, access to credit and capital;
  - 4. Ability to obtain bonding;
  - 5. A positive comparison of the DBE's business and financial profile with profiles of non-DBE businesses in the same area or similar business category; and
  - 6. Good management capacity and capability.
- L. Upon determination by the recipient that the participant should be graduated from the developmental program, the recipient should notify the participant in writing of its intent to graduate the firm in a letter of notification. The letter of notification should set forth findings, based on the facts, for every material issue relating to the basis of the program graduation with specific reasons for each finding. The letter of notification should also provide the participant 45 days from the date of service of the letter to submit in writing information that would explain why the proposed basis of graduation is not warranted.
- M. Participation of a DBE firm in the program may be discontinued by the recipient prior to expiration of the firm's program term for good cause due to the failure of the firm to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of inadequate performance or unjustified delinquent performance. Also, the recipient can discontinue the participation of a firm that does not actively pursue and bid on contracts, and a firm that, without justification, regularly fails to respond to solicitations in the type of work it is qualified for and in the geographical areas where it has indicated availability under its approved business plan. The recipient should take such action if over a 2-year period a DBE firm exhibits such a pattern.

#### **Appendix D to Part 26 -- Mentor-Protégé Program Guidelines**

- A. The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from other firms. To operate a mentor-protégé program, a recipient must obtain the approval of the concerned operating administration.
- B.
  - 1. Any mentor-protégé relationship shall be based on a written development plan, approved by the recipient, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement and the services and resources to be provided by the mentor to the protégé. The formal mentor-protégé agreement may set a fee schedule to cover the direct and indirect cost for such services rendered by the mentor for specific training and assistance to the protégé through the life of the agreement. Services provided by the mentor may be reimbursable under the FTA, FHWA, and FAA programs.
  - 2. To be eligible for reimbursement, the mentor's services provided and associated costs must be directly attributable and properly allowable to specific individual contracts. The recipient may establish a line item for the mentor to quote the portion of the fee schedule expected to be provided during the life of the contract. The amount claimed shall be verified by the recipient and paid on an incremental basis representing the time the protégé is working on the contract. The total individual contract figures accumulated over the life of the agreement shall not exceed the amount stipulated in the original mentor/protégé agreement.
- C. DBEs involved in a mentor-protégé agreement must be independent business entities which meet the requirements for certification as defined in subpart D of this part. A protégé firm must be certified *before* it begins participation in a mentor-protégé arrangement. If the recipient chooses to recognize mentor/protégé agreements, it should establish formal general program guidelines. These guidelines must be submitted to the operating administration for approval prior to the recipient executing an individual contractor/ subcontractor mentor-protégé agreement.



CALIFORNIA  
HIGH-SPEED RAIL  
AUTHORITY

Partnership Agreement  
With  
California High Speed Rail Authority  
And  
Local Workforce Development Program  
Small Business Program  
March 2012

*We, the undersigned partners in the Local Workforce Development Program and the California High Speed Rail Authority agree to work together to promote small business participation, to meet or exceed our 30 percent participation goal by increasing the pool of qualified small business firms who are ready, willing, and able to compete for procurement, construction, architecture, engineering and professional services contracts.*

*We agree to work together to prepare today's youth and adults for the challenges of tomorrow's workforce by cultivating a rich learning environment where students are challenged, and encouraged to explore architecture, engineering, and construction career opportunities.*

*We shall develop and administer a Memorandum of Understanding that strives to accomplish the following activities to meet our mutual objectives.*

- 1.
- 2.
- 3.

---

Roelof van Ark, CEO  
California High Speed Rail Authority

---

Workforce Center, Executive Director  
Local Workforce Center

## **PARTNERSHIP AGREEMENT**

**STATE OF CALIFORNIA  
BETWEEN  
CALIFORNIA HIGH SPEED RAIL AUTHORITY  
AND  
DEPARTMENT OF GENERAL SERVICES**

---

We the undersigned partners within California's State Government achieve greater efficiency in the delivery of contract opportunities to Californians. We will minimize overlap, redundancy, and cost in state operations by being fully committed to leveraging shared services and information in order to make state government more transparent, accessible and accountable, and enhance the quality of services to Small Businesses, Disabled Veteran Business Enterprises, and Disadvantaged Business Enterprises. Leveraging shared services have been proven to achieve greater efficiency, cost-effectiveness and reduced fiscal impact.

**Whereas the California High Speed Rail Authority agrees to:**

- ◆ Assist business owners on where to obtain Small Business certification.
- ◆ Email Small Business information and certification opportunities to business owners upon request.
- ◆ Distribute Small Business certification brochures at outreach events.
- ◆ Attend outreach events in partnership with the Department of General Services to present and distribute CHSRA business opportunity material.
- ◆ Share information with the Department of General Services critical to maintaining the integrity of Small Business certification.

**Whereas the Department of General Services agrees to:**

- ◆ Educate the CHSRA on navigating the Web site for the Small Business and the Disabled Veteran Business Enterprise certification process.
- ◆ Educate the CHSRA on navigating the BidSync Web site.
- ◆ Distribute CHSRA contract opportunities to Small Businesses and Disabled Veteran Business Enterprises.
- ◆ Attend CHSRA outreach events.

We mutually agree to actively participate in regularly scheduled meetings and to work together as a cohesive cooperative team to maximize the participation of Small Businesses and Disabled Veteran Business Enterprises including Disadvantaged Business Enterprises, in the State's contracting program and to strengthen and sustain California's economy."

---

**SIGNED:**